The reasons why the Petitioner's constitutional rights are violated are set out more fully below.

(1)

The Petitioner and Shirley Miller were arrested without probable cause—see Point (1) Exhibit E and Petitioner's car was illegally searched without a search warrant, also Exhibit E Point I of this petition.

(2)

The evidence offered as to both assault and possession of a weapon was insufficient as a matter of law, the verdict was also against the weight of the evidence, see Point (2) Exhibit—F—.

(3)

The Police Lieutenant was improperly permitted to testify, to inflammatory conclusions made by him before the arrest, see Point (3) Exhibit—G—

(4)

The erroneous instructions by the trial Judge, require a new trial, see Point (4) Exhibit—H—

(5)

The prosecuting attorney was improperly permitted to indulge in inflammatory summation, see Point (5) Exhibit—I—

(6)

The trial Judge committed prejudicial error by permitting the Jury to take Exhibits into the Jury room, when the defendant refused to consent to this, see Point (6) Exhibit—J—

(7)

At the trial to prove the defendant's identity as a prior felon the trial Judge committed prejudicial error by refusing the defendant peremptory challenges in selection of the Jury, see Point (7) Exhibit—K—

(8)

The trial judge improperly disclosed to the Jury trying the identity issue the fact that the defendant stood convicted of a felony in New York, see Point (8) Exhibit—L—

(9)

The previous conviction in Tennessee was unconstitutionally obtained and should not have been made the basis for increased punishment, see Point (9) Exhibit—M—

(10)

The sentence is too severe and should be reduced, see Point (10) Exhibit—N—

(11)

Shirley Miller and William Stubbs were both indicted for illegal possession, Shirley Miller pleaded guilty to illegal possession, see Exhibit—A—Indictment No. 198.

(12)

Motions filed by defendant before sentencing. Motions for the dismissal or retrial of both charges, see Exhibit—B*

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* The certificate of probable cause granted by the United States Court of Appeals for the Second Circuit was limited to the issue of the constitutionality of the Tennessee conviction, and this was the sole issue considered by the court. Omitted portions of this petition deal with petitioner's attack on his Monroe County conviction.

* * *

POINT "IX"

The previous conviction in Tennessee was unconstitutionally obtained and should not have been made the basis for increased punishment.

POINT "X"

The sentence is too severe and should be reduced.

* * *

POINT 9—EXHIBIT M

The previous conviction in Tennessee was unconstitutionally obtained and should not have been made the basis for increased punishment.

Former Penal Law, § 1943 provides that a sentencing court in New York should under proper circumstances determine whether a previous conviction was unconstitutionally obtained. The trial Judge in the present case entered into such an inquiry (I 44-75) determining that no constitutional rights of the defendant were in any way infringed on the previous conviction (I 73-75).

The predicate felony proved was a conviction for murder in the first degree in the state of Tennessee in 1964. There was proof that a Mr. and Mrs. Holm were driving through Tennessee from there home in Texas. Stubbs v. State, 216 Tenn. 567, 570; 393 S.W. 2d 150. They first encountered the defendant Stubbs at a roadside park where they had stopped to eat lunch (216 Tenn. 567, 570-571). According to the testimony of Mr. Stubbs, he forced the couple at pistol point to get in the back seat of their automobile, and he drove the automobile (216 Tenn. 567, 571). Mrs. Holm was shot as was Mr. Holm. Mrs. Holm died.

The crucial witness in the Tennessee case, thus, was Mr. Holm. He would be able to say whether it was the defendant or another, perhaps Mr. Holm himself, who shot

Mrs. Holm. Mr. Holm was in Sweden at the time of the defendant's trial in 1964 (216 Tenn. 567, 574).

The appellant's Tennessee conviction was unconstitutionally obtained, because a transcript of Mr. Holm's testimony at an earlier trial of the defendant was admitted (216 Tenn. 567, 574, 516).

Ordinarily, the use of a transcript of earlier testimony would be a question of evidence to be determined by the law of Tennessee. See the uniform law to secure attendance of witnesses. Tenn. Code Annotated § 40-2419 et seq. The special factor present which makes the use of Mr. Holm's earlier testimony an error of constitutional proportions is that a federal district court had conclusively determined that the constitutional rights of the defendant at the original trial had been violated, "Because counsel at first trial had not been given a chance to investigate background of such witness [Mr. Holm]." (216 Tenn. 567, 569, 570, 576).

The right of cross examination is included in the right of an accused in a criminal case to confront the witnesses against him secured by the Sixth Amendment. Pointer v. Texas, 380 U.S. 400, 404, 406-407; Douglas v. Alabama, 380 U.S. 415, 419; Bruton v. United States, U.S. 88 S.Ct. 1620, 1622. The right of cross examination secured by the confrontation clause of the Sixth Amendment is made applicable to the states by the Fourteenth Amendment. Roberts v. Russel, U.S. 88 S. Ct. 1921, 1922.

Since the first conviction of the defendant Stubbs in Tennessee was unconstitutionally obtained because he was effectively denied the right to cross examine the witness (Mr. Holm) the second trial in Tennessee is tainted by unconstitutionality for the identical reason. Mr. Stubbs has never been confronted with his principle accuser.

The decision of the Tennessee Supreme Court (Stubbs v. State, 216 Tenn. 567, 393 S.W. 2d.150) is not controlling, especially since no authority was cited on this important

constitutional question. The only case cited, Hall v. State, 65 Tenn. 522, held that it was error to let a person detail what he heard a witness on a committing trial state when such witness was still living, merely because he was not in attendance at the trial and was a resident of another state. The defendant Stubbs should not have been sentenced as a second felony offender (S 16-17).*

POINT 10—EXHIBIT N

The sentence is too severe and should be reduced.

The defendant was sentenced upon the conviction for unlawful possession of a loaded revolver to a term of imprisonment of from thirteen to fourteen years (S 16). And was sentenced upon the assault conviction to imprisonment for a term of nineteen to twenty years (S 17). The sentences were imposed upon the defendant as a second felony offender, and were directed to run consecutively (S 16-17). The trial judge said to the defendant at the time of sentence

> "... You have indicated that you're totally beyond the capacity of rehabilitation, rehabilitative efforts by any institution anywhere. . . .
>
> This court has never before imposed a maximum sentence. This court is doing so now in full realization of its impact . . ." (S 15, 16)

Sentencing is one of the most difficult problems that confront the judge of a criminal court. People v. Silver, 10 AD 2d 274, 199 N.Y.S. 2d 254. In reviewing the propriety of a sentence in a particular case, the court must give consideration to all the elements involved concerning the

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* The transcript of the minutes of the sentencing imposed on October 7, 1966 are separately numbered and follow the 78th page of the trial on the question of identity and constitutionality.

crime itself and the wrongdoer. People v. Cotter, 25 AD 2d 609, 267 N.Y.S. 2d 679 (Memorandum).

In People v. Silver, 10 AD 2d 274, 199 N.Y.S. 2d 254, in reducing to a suspended sentence with a year's probation an original penitentiary sentence of one year upon a conviction of grand larceny in the first degree (for which the maximum term of imprisonment could of been ten years) the court said:

> "Great care should therefore be exercised in imposing judgment for the very obvious reason that vast differences exist among individual offenders and there personal capacity for rehabilitation.
>
> The prime aim of socialized justice, and inherent in its administration in our criminal courts today, is a dispassionate and conscientious evaluation of the unique aspects of the convicted offender's total personality, his intelligence, his character structure, his demonstrated ability to conform, his capacity to accept our social disciplines and limits, and his overall stability. Such an inventory of his assets and liabilities is indispensable to a judicial determination in selected cases of whether accidental or situational offender's with promising potential can be aided to readjust to a normal life in the community without the disruptive, and sometimes destructive, effects of imprisonment.
>
> In sum, a sentence must not only encompass the community's condemnation of the defendant's misconduct, but must also evaluate the possibilities of the rehabilitation of the defendant's as a useful and responsible member of the community." (199 N.Y.S. 2d 254, 256)

The facts disclosed in Stubbs v. State, 216 Tenn. 567, 393, S.W. 2d 150 do not show the defendant, even assuming

that he was guilty of the Tennessee crime, to have necessarily been utterly depraved, there is a suggestion about the case that the defendant may not have been fully aware of the fatal events (216 Tenn. 567, 571). It was probably wrong also, for the trial judge in the present case to have concluded that the defendant was "totally beyond the capacity of rehabilitation, rehabilitative efforts by any institution anywhere" (S15). If the trial judge's sentiments are true, it is a very sad commentary upon the current correctional practices.

It is possible that the jury would not have convicted the defendant for having the loaded revolver in the glove compartment of his automobile. Under the instructions given to the jury there verdict is consistant with there having found that the only possession of which the defendant was guilty was that occurring at the same time as the assault. It is of course impossible for one to commit an assault by shooting a firearm (in violation of former Penal Law § 240) without at the same time having in his possession a "firearm which is loaded with ammunition" (in violation of former Penal Law § 1897).* Accordingly, by imposing consecutive sentences the trial judge may well have violated former Penal Law § 1938. See People ex rel. Maurer v. Jackson, 2 NY 2d 259, 159 N.Y.S. 2d 203. Compare People ex rel. Nickerson v. LaVallee, 17 AD 2d 874, 233 N.Y.S. 2d 67 (3d Department, memorandum). The court has the power to correct the excessiveness, C.C.A. § 543.

The trial judge imposed, effectively the greatest possible sentence for anyone convicted of the crimes with

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* Absence of a license is not an element of the crime of possession any longer, if it ever was. See Former Penal Law, § 1900 subd. A(3). This is a matter of defense. If absence of a license were an element of the crime, the defendant would have argued that the People failed to prove it.

which the defendant was charged. He is to serve a total term of imprisonment of from thirty-two to thirty-four years. This is the most that could have been imposed upon a defendant who, let us say, deliberately attacked a small child with a machine gun and hit the child or caused a permanent state of shock or mental breakdown. It would seem desirable in the scheme of criminal punishment to impose a less severe sentence where the actual, accomplished harm to another member of society was slight.

The crime for which the defendant was prosecuted may seem to us particularly horrible. The crime occurred on a sedate city street, the kind we live on. It did not take place in a hidden corner of skid row or among the debris of a ghetto, but because this particular crime may seem to strike close to home, the defendant should not be made to serve such a harsh, harsh, sentence.

Conclusion

• • •

Summary

The petitioner respectfully submits to the court the following questions, can the petitioner, in disregard to his fundamental constitutional rights be arrested, without probable cause, have his automobile searched without permission or a warrant, have the court-appointed attorney collaborate with the district attorney against him, have a prejudicial judge let the district attorney and a witness use inflammatory statements and hearsay, and the Judge himself who lets his prejudice interfere with the laws and rules of his court, denied relief on account of the ineffective assistance of counsel, can this be just? The answer is no.

The petitioner contends that he has shown the Honorable court legal and sound proof that his constitutional rights have been severely violated and respectfully requests

the Honorable court to issue an order out and under the seal of this Honorable court to the respondent the Hon. Vincent R. Mancusi, warden, Attica State Prison, Attica State Prison, Attica New York to have the petitioner brought before the court on a day thereof and for the respondent to show cause why the petitioner should not be released from his unlawful detention.

The undersigned swears that all facts, statements, exhibits and points presented in this petition are true to the best of his information, knowledge and belief.

Respectfully submitted,

WILLIAM C. STUBBS,
Petitioner.

(Sworn to before me this 11 day of March, 1969.)

RALPH J. BOTTONE,
RALPH J. BOTTONE,
Notary Public.

Residing in Wyoming County.
My Commission expires March 30, 1969

(Affidavit of service omitted in printing.)

Motion for Leave to Proceed in Forma Pauperis.

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK
ROCHESTER, NEW YORK.

[SAME TITLE]

COUNTY OF WYOMING }
TOWN OF WYOMING } ss.:
STATE OF NEW YORK }

SIR:

The Petitioner moves for an order permitting him to proceed in this court in forma pauperis without prepayment of fees and cost or security therefor. Directing that the expenses of printing of the record on appeal for petition of habeas corpus be paid for by the United States, and for assignment of counsel to represent him, and granting such other relief as the court believes proper, it is so prayed.

Respectfully submitted,

WILLIAM C. STUBBS
Petitioner

(Jurat omitted in printing.)

Affidavit in Support of Motion to Proceed in Forma Pauperis.

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK,
ROCHESTER, NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF WYOMING }
TOWN OF ATTICA }

After first being sworn, William Stubbs says that

1. He is the petitioner, this is a petition for a writ of habeas corpus to the United States District Court, Western District of New York State, Rochester, New York, in relation to a judgment of conviction of the County Court, Monroe County, for the crimes of assault in the first degree in violation of former Penal Law § 240, and possession of a loaded firearm, in violation of former Penal Law § 1897, subd. 2. The grounds for this petition are that the petitioner was deprived of the right to the effective assistance of counsel upon his appeal to the Appellate Division and that errors in deprivation of his rights under New York Laws and under the United States Constitution occurred at his trial.

2. He believes he is entitled to redress.

3. He was assigned counsel by the New York Courts to conduct both the trial and the appeal. Mr. Bruce K. Carpenter volunteered his services in connection with a motion for reargument of the appeal to the Appellate Divi-

sion and with an application for leave to appeal to the New York Court of Appeals and for writ of certiorari to the Supreme Court of the United States.

4. He owns no property and has no savings (except an account maintained at Attica State Prison with a balance of less than $15.00.

5. The undersigned has been imprisoned pursuant to the judgment of conviction for more than two years, is unemployed and has no source of income.

Respectfully submitted,

William C. Stubbs
Petitioner

(Jurat omitted in printing.)

Notice of Motion.

UNITED STATES DISTRICT COURT,
FOR THE WESTERN DISTRICT,
STATE OF NEW YORK,
ROCHESTER, NEW YORK.

[SAME TITLE]

COUNTY OF WYOMING }
TOWN OF ATTICA }
STATE OF NEW YORK }

Sir:

Please take notice that upon the annexed, certified petition of William C. Stubbs, duly sworn and certified this 31 day of March, 1969

The undersigned will move this Honorable Court at part thereof at a motion term to be heard in the courtroom of the United States District Court, Western District of New York State at Rochester, N. Y. State of New York at 10 o'clock in the forenoon of the same day or as soon thereof, that this motion can be heard, granting petitioner's plea for the following records and affidavits:

(1) The Grand Jury judgment roll of the People v. Shirley Miller and William Stubbs, of April 29th, 1966.

(2) Certified copy of petitioner's trial minutes.

(3) Certified copy of co-defendant Shirley Miller's pleading minutes on arraignment.

(4) Certified copy of petitioner's court appearances from April 1966 through September, 1966.

(5) Certified copy of information, of co-defendant Shirley Miller.

(6) Copy of Probation Report on petitioner. It is so filed.

Respectfully submitted,

WILLIAM C. STUBBS,
Petitioner.

(Jurat omitted in printing.)

Affidavit in Support of Motion.

UNITED STATES DISTRICT COURT,
FOR THE WESTERN DISTRICT
STATE OF NEW YORK,
ROCHESTER N. Y.

[SAME TITLE]

COUNTY OF WYOMING
TOWN OF ATTICA
STATE OF NEW YORK

PLEASE TAKE NOTICE upon this annexed petition of William C. Stubbs, certified this 31 Day of March 1969, the above named petitioner deposes and says,

That this petition is interposed under the Applicable Provisions of section 198-199 of the C.P.L.R. and also under Article XIV of the constitution of the United States, wherein petitioner seeks to be granted certified copies of

records and affidavits aforementioned and very pertinent to the People of the State of New York v. William Stubbs and Shirley Miller.

Petitioner further contends and says that this Honorable Court in its inherent discretionary wisdom can invoke its authority under the aforementioned provisions of the C.P.L.R. and Article XIV of the constitution of the United States of America, and grant to the petitioner the records pleaded for in the instant petition.

Petitioner respectfully requests that an order issue out and under the seal of this Honorable court granting petitioner's motion by Forma Pauperous.

NOTICE

Petitioner has appealed in proper legal form for these records, two times in the Monroe County Court and was denied on both occasions, on Jan. 6, 1967, and Sept. 8, 1967, also in Feb. 1969 in the 4th App. Div. Petitioner is without legal council and needs these records for further legal court action.

Respectfully submitted,

WILLIAM C. STUBBS.

(Jurat omitted in printing.)

Order to Show Cause.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK.

U. S. ex rel. WILLIAM C. STUBBS,

v.

VINCENT R. MANCUSI, Warden, Attica State Prison.

Petitioner pro se.

Filing in forma pauperis allowed.

The petitioner is held on a judgment of the Monroe County Court following a trial. He was sentenced on October 7, 1966. His claims as to the violation of his rights under the Federal Constitution are set forth in pages 9 and 10 of the petition and are 10 in number. The conviction was affirmed by the Appellate Division, 30 A.D. 2d 777. Reargument was denied, 30 A.D. 2d 932. The Court of Appeals of New York denied permission to appeal. Certiorari was denied February 24, 1969.

IT IS HEREBY ORDERED that the respondent show cause before this court on May 12, 1969, at 10 A. M. at the Federal Building, Rochester, N. Y., why a writ of habeas corpus should not issue, and produce for this court's examination the record on appeal to the Appellate Division and the briefs of the respective parties in the Appellate Division. The presence of the petitioner is not required on the return of this order to show cause.

HAROLD P. BURKE
Harold P. Burke
U. S. District Judge

April 21, 1969.

Decision and Order of the United States District Court for the Western District of New York, dated June 30, 1969, denying writ of habeas corpus and denying certificate of probable cause, is printed in the Petition for Writ of Certiorari at p. 13a.

Notice of Appeal.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT,
STATE OF NEW YORK.

Civ.-1969-136

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

WILLIAM C. STUBBS,

Petitioner.

SIR:

Please take notice that the petitioner, William C. Stubbs, above named, hereby appeals to the Court of Appeals for the Second Circuit, United States Court House, Foley Square, New York City, from an order of the United States District Court for the Western District of New York State, Rochester, New York denying a petition for Writ of Habeas Corpus on June 30, 1969.

This petition of Habeas Corpus arose out of the conviction of the petitioner from the Monroe County Criminal Court, City of Rochester, County of Monroe, State of New York, for the crimes of assault in the first degree and illegal possession of an unlicensed revolver, October 7, 1966, after a trial by jury.

Petitioner, hereby appeals on the grounds that the aforementions convictions were obtained in violation of petitioner's constitutional rights and petitioner hereby appeals from each and every part of said conviction and from the whole thereof.

Respectfully submitted,

WILLIAM STUBBS
Petitioner

(Jurat omitted in printing.)

Affidavit of Forma Pauperis.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT,
STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

vs.

WILLIAM C. STUBBS,
Petitioner.

COUNTY OF WYOMING }
TOWN OF ATTICA }
STATE OF NEW YORK }

Sir:

Please take notice that the above named Appellant, William C. Stubbs being duly sworn according to law deposes and say that he is an American citizen by birth and that he is a resident of the State of New York.

Petitioner further deposes and says that he does not own any property either real or personal that could be converted into cash.

Therefore Petitioner claims to be a poor person as defined in Section 198-199 of the C.P.L.R. and respectfully requests that an order issue out and under the seal of this Honorable court granting Petitioner leave to proceed with his appeal by forma pauperous it is so prayed.

Respectfully submitted,

WILLIAM STUBBS
Petitioner

Sworn to before me
this 3rd day of July 1969

(Jurat omitted in printing.)

(Affidavit of Service omitted in printing.)

Certificate of Probable Cause.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 7th day of October, one thousand nine hundred and sixty-nine.

UNITED STATES ex rel. WILLIAM C. STUBBS,
Relator-Appellant,

v.

VINCENT R. MANCUSI, Warden, Attica State Prison,
Respondent-Appellee.

A motion having been made herein by relator appellant pro se for a certificate of probable cause, for leave to proceed in forma pauperis and for the assignment of counsel.

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted, limited to the issue of the constitutionality of the Tennessee conviction.

Bruce A. Carpenter of Buffalo, New York, Legal Aid Society, is assigned as counsel.

It is further ordered that counsel for relator-appellant shall be permitted to remove the original record from the files of this court for a period sufficient to prepare a brief and appendix for appeal and that said record shall be returned to this court no later than the date of the filing of appellant's brief and appendix.

(ILLEGIBLE),

(ILLEGIBLE),

(ILLEGIBLE),
Circuit Judges.

Decision of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 126—September Term, 1970.

(Argued October 26, 1970 Decided April 19, 1971.)

Docket No. 34449

UNITED STATES OF AMERICA, ex rel. WILLIAM C. STUBBS,
Petitioner-Appellant,

against

VINCENT R. MANCUSI, Warden of Attica Correctional Facility,
Respondent-Appellee.

Before:

MOORE, FRIENDLY and ADAMS,*

Circuit Judges.

Appeal from denial of petition for habeas corpus by the District Court for the Western District of New York, Harold P. Burke, *Judge,* challenging sentence imposed as second felony offender.

Reversed.

BRUCE K. CARPENTER, Dunkirk, New York (Woodin & Carpenter, Dunkirk, New York, of counsel), *for Petitioner-Appellant.*

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*United States Circuit Judge of the Court of Appeals for the Third Circuit, sitting by designation.

Decision of the United States Court of Appeals for the Second Circuit.

MARIA L. MARCUS, Assistant Attorney General, New York, New York (Louis J. Lefkowitz, Attorney General of the State of New York, New York and Samuel Hirshowitz, First Assistant Attorney General, New York, New York, of counsel), *for Respondent-Appellee.*

ADAMS, *Circuit Judge:*

Relator Stubbs was convicted in Monroe County, New York in 1966 for first degree assault and possession of a firearm. The County Court considered a prior conviction of murder obtained against Stubbs in Tennessee, found him to be a second felony offender, and sentenced him to consecutive terms of imprisonment totalling thirty-two to thirty-four years.[1] Stubbs here challenges his sentence, alleging that his prior felony conviction in Tennessee was constitutionally invalid. The Honorable Harold P. Burke, District Judge of the District Court for the Western District of New York, denied Stubbs' application for a writ of habeas corpus, and relator appealed.

Stubbs was first convicted of a vicious murder in Tennessee in 1954. This conviction was vacated in 1964 when

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[1] Under former New York Penal Law, §§ 241, 1897, [present New York Penal Law §§ 120.10, 265.05 (McKinney 1967)], Stubbs could have been sentenced to a maxmum of seventeen years as a first felony offender on these charges. The sentence was increased under the authority of former Penal Law § 1941 (compare present § 70.10). Stubbs was also convicted of the felony of breaking and entering in Texas in 1953. As far as the record in the present case reveals, the 1953 conviction remains available as a predicate for increased punishment under § 1941. Present Penal Law § 70.10 would not govern resentencing because of the effective date expressed in § 5.05. Cf. *Gerberding* v. *Swenson*, 435 F.2d 368 (8th Cir. 1970).

the Honorable William E. Miller, United States District Court for the Middle District of Tennessee, found Stubbs to have been denied, because of late appointment, the effective assistance of counsel. *Stubbs* v. *Bomar,* Civil Action 3585 (M.D. Tenn., filed January 6, 1964). At retrial, the prosecution's primary witness did not appear, but his testimony from the first trial was read over defense objections, and Stubbs was convicted. This conviction was upheld by the Supreme Court of Tennessee. *Stubbs* v. *State,* 216 Tenn. 567 (1965).

The critical issue before us is whether relator's 1964 Tennessee conviction was obtained in violation of his right —under the Sixth Amendment to the Constitution—to be confronted with the witnesses against him, and thus was an improper predicate for increased punishment.[2]

The facts underlying the Tennessee conviction are as follows: Mr. and Mrs. Holm were driving through Tennessee on their way from Texas to Rhode Island for an eventual journey to Sweden. Stubbs asked Mr. and Mrs. Holm at a roadside park for a ride, but was refused. He then forced them at gunpoint to permit him to drive their car while the Holms rode in the back seat. Stubbs claimed that when they were near Bristol, Tennessee, he was suddenly struck on the head and he heard a loud bang, the car hit a tree and Stubbs then fled. The police were called to investigate the wrecked car, and they found Mrs. Holm dead by a gunshot wound; and Mr. Holm shot twice in the face. Stubbs was soon apprehended in a police road-block. From his hospital bed, Mr. Holm identified Stubbs as the man who shot him and his wife. Three days before his trial, three attorneys were appointed to defend Stubbs, and they requested and were refused a continuance to pre-

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[2] See *Burgett* v. *Texas,* 389 U.S. 109 (1967).

pare the defense. At trial, Mr. Holm was the state's primary witness, and Stubbs was convicted.

By the time of the 1964 retrial, Mr. Holm had become a permanent resident of Sweden, but had not relinquished his American citizenship. No effort was made by the state to obtain Holm's attendance at this trial. Instead, Holm's son was brought from Texas to testify that his father was presently residing in Sweden whereupon Holm's prior testimony was admitted over objection.[3] The propriety of the admission of that evidence, in light of *Barber* v. *Page*, 390 U.S. 719 (1968), and *California* v. *Green*, 399 U.S. 149 (1970), is here in question.[4]

As noted by the Supreme Court in *Green*, "the particular vice which gave impetus to the [Confrontation Clause] was the practice of trying defendants on 'evidence' which consisted solely of *ex parte* affidavits or depositions secured by the examining magistrates, thus denying the defendant the opportunity to challenge his accuser in a face-to-face encounter in front of the trier of fact." 399 U.S. at 156. A traditional exception to the confrontation requirement has been the introduction of testimony of a witness who is now unavailable, but who previously testified subject to cross-examination at judicial proceedings against the same defendant. E.g., *Mattox* v. *United States*, 156 U.S. 237 (1895). While the scope of the Confrontation Clause is not coextensive with the rules of hearsay and their exceptions,[5]

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[3] *See generally* 5 Wigmore, *Evidence*, §§ 1396, 1404 (3d ed. 1940); *Note, Confrontation and the Hearsay Rule*, 75 Yale L.J. 1434 (1966).

[4] In *Berger* v. *California*, 393 U.S. 314 (1969), the Supreme Court directed that *Barber* v. *Page* should "be given fully retroactive application."

[5] *California* v. *Green*, *supra*, at 155-156.

"'necessity'"[6] is a factor common to both that may justify the use of prior recorded testimony in limited instances of genuine unavailability. The test for such use is whether "the prosecutional authorities have made a good-faith effort to obtain [the witness'] presence at trial." *Barber* v. *Page, supra* at 725. No such effort was made here, and Holm's testimony was improperly admitted into evidence. Where there is no showing that a witness beyond the effective reach of a court's subpoena will refuse to return voluntarily to testify if requested, the prosecution may not introduce prior testimony without demonstrating a reasonable effort to secure his presence. Cf. *Virgin Islands* v. *Aquino*, 378 F.2d 540 (3rd Cir. 1967); *Owens* v. *Eyman*, 434 F.2d 1962 (9th Cir. 1970). Absence from the continental United States is not per se a sufficient reason to broaden the exception to the Confrontation Clause allowing the admission of prior testimony of a presently unavailable witness. For although there is a much greater chance that it will not be possible to bring before the court a witness residing abroad, "'the possibility of a refusal is not the equivalent of asking and receiving a rebuff.'" *Barber* v. *Page, supra*, at 724, quoting with approval Judge Aldrich's dissent in the Court of Appeals, 381 F.2d 479, 481 (10th Cir. 1967).

New York urges that even if Holm's testimony was erroneously admitted in the 1964 trial, such error was harmless beyond a reasonable doubt within the meaning of *Chapman* v. *California*, 386 U.S. 18 (1967).[7] Relator answers that Judge Miller found Stubbs did not have effective assistance of counsel at his 1954 trial, so that his right of cross-examination may not have been satisfied

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[6] See *California* v. *Green, supra*, at 167, footnote 16.

[7] See also, *Note, Harmless Constitutional Error: A Reappraisal*, 83 Harv. L. Rev. 814 (1970).

even initially. Judge Miller's decision, however, even if it were binding on New York, would not establish the ineffectiveness of the cross-examination of Holm, but only the prejudice to the totality of defense preparation from late appointment of counsel.

Nevertheless, it is clear as Stubbs' 1964 counsel recognized that Holm was not questioned regarding the core of Stubbs' defense—namely, that while Stubbs originally forced himself on the Holms, he gained their sympathy during the course of the trip and in effect became their guest. This claim was significant because even if Stubbs fired his pistol accidentally (he denied firing at all), he might still be found guilty of felony murder unless the felony of kidnapping had ended. Stubbs' story was given some plausibility by his testimony that he forced himself on the Holms from desperation and hunger; they made him welcome when he explained his motivation; Mrs. Holm suggested he put his gun on the seat to avoid it being seen while driving through a town; and they drove past a policeman without the Holms making any outcry. While all of the above may also be explained by the Holms' fear of Stubbs, we cannot declare the absence of any examination of Holm—the only eye-witness to the alleged crime—on this point to be harmless beyond a reasonable doubt. Compare *Burgett* v. *Texas, supra,* at 115 with *United States ex rel. Moore* v. *Follette,* 425 F.2d 925 (2nd Cir. 1970). Whether the test is one of overwhelming evidence or of untainted evidence,[8] the error of admitting Holm's testimony at Stubbs' second trial was central to Stubbs' conviction, rather than harmless to his case.

The dissent makes an appealing case for using the Tennessee conviction to augment on the New York sentence.

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[8] See 83 Harv. L. Rev. at 817-820.

It essentially employs the "bad man" approach. However, it fails to cite any cases to support such position and also fails to demonstrate where the cases relied upon here are either unearned or inappropriate.

MOORE, Circuit Judge (dissenting):

Here is presented an extraordinary example of "justice" dispensed by the federal courts. Stubbs, the appellant, released from a Texas penitentiary in June 1954, a few days later kidnapped at gunpoint in Tennessee a Mr. and Mrs. Holm and forced them to accompany him in their car. While on the road he murdered Mrs. Holm apparently "in cold blood" and attempted to murder Mr. Holm, wounding him twice. Stubbs was apprehended shortly thereafter at a roadblock. He tried to explain the blood on his clothing by attributing it to an accident while fishing. Stubbs was taken to the hospital to which Holm had been taken. There, in the presence of police officers and a doctor, Holm identified Stubbs as "the man that killed my wife and shot me."

Stubbs was indicted in the Criminal Court in Tennessee on July 8, 1954 and arraigned the next day, July 9, 1954. The Trial Judge immediately appointed three members of the County Bar to represent Stubbs. Although counsel moved for a continuance for additional time to prepare a defense (a practice not unusual for defense counsel), the trial was set for, and proceeded on, July 12, 1954.

In addition to other witnesses, Holm testified to the facts of the kidnapping, the murder of his wife and his own wounding. There is no indication in the record that Stubbs' counsel did not have a full opportunity to cross-examine Holm. The jury convicted Stubbs or four indictments,

murder in the first degree, assault with intent to murder and two counts of kidnapping. He was sentenced to concurrent terms of 99 years and 21 years.

Ten years passed. Stubbs by habeas corpus petition then advanced the claim in a federal court in Tennessee that his 1954 conviction should be set aside. The federal judge, in my opinion quite erroneously, granted the petition on the ground that "the petitioner was denied effective representation by counsel" in that "Court-appointed counsel did not have adequate and sufficient time within which to prepare the necessary defense prior to going to trial" and, declaring the first trial "null and void," remanded Stubbs for further prosecution.

On the second trial in 1964 the State called fifteen (15) witnesses, including the three (3) Highway Patrolmen and a Police Investigator who were present in Holm's hospital room on June 11, 1954 and who testified to Holm's identification of Stubbs as the murderer and assailant. The testimony of another eye-witness who had died in the ten-year interval was introduced from the transcript. Holm had returned to Sweden where he was in residence. His 1954 testimony was also introduced from the transcript.

Again Stubbs was convicted of first degree murder and sentenced to twenty years and one day. The Supreme Court of Tennessee reviewed and affirmed the conviction. In an opinion by the Chief Justice, the court considered and ruled upon with approval the introduction of the Holm testimony from the transcript. There was, however, a modification of the sentence. Stubbs urged that he was entitled to a credit of his pre-trial imprisonment since 1954 and with this claim the court agreed.

How and why Stubbs was released from Tennessee is not revealed but 1966 finds him in New York State pur-

suing his calling and convicted in Monroe County of first degree assault and possession of a gun. Sentences (as a first offender) could have been imposed of sixteen to seventeen years. However, because of the 1964 Tennessee conviction, Stubbs was a second felony offender and, under New York Penal Law, § 1941 (then, and to this case on remand, currently, applicable), was subject to the sentence actually imposed of thirty-two to thirty-four years. Parenthetically, although not mentioned below, I see no reason why the County Court should not be able to consider the Texas conviction as a predicate to second offender treatment on any re-sentence.

All this background material, although not irrelevant to the issue before us, has caused the majority to divert its attention to Tennessee instead of to New York. Stubbs is not seeking relief from his Tennessee conviction as such but simply from its use to support a longer sentence for his subsequent New York conviction. The attack now made on the Tennessee conviction is purely collateral. On the merits I would hold that we should respect the decision of the Tennessee Supreme Court on the subject of the admission of Holm's 1954 testimony via the transcript.

Adverting momentarily to the merits of admitting Holm's transcript testimony, the facts definitely show, in contrast to widely differing facts in cases cited, that Holm was beyond the jurisdiction of the Tennessee courts even with federal aid. See *Barber* v. *Page,* 390 U.S. 719 (1968). Therefore, I do not find it necessary to restrict the permissive categories to death and connivance. Enough flexibility should exist in the law to consider the facts of each case in relation to avaibility and importance.

All of Stubbs' present arguments about lack of confrontation are but a smoke-screen. He and his counsel confronted Holm; his counsel cross-examined Holm; the issues

and facts were not complex. More important, however, is the fact that on the 1964 trial, many eye-witnesses and ear-witnesses testified. Stubbs undoubtedly would have been convicted without the use of Holm's testimony. Of course it was important as an ingredient but so is almost all testimony placed in the category of harmless error. If harmless error be a factor on direct appeals, how much the more so should it be on collateral attacks!

In my opinion the able argument advanced by Stubbs' counsel has sought to divert us (and succeeded as to the majority) into paths of constitutional and hackneyed generalities. We all recognize the rights of confrontation and cross-examination. However, the many cases cited based on other and different facts are not dispositive here.

I would affirm the denial of the writ but at the very least would have the majority give more explicit instructions to the County Court on the possibility of regarding the Texas conviction as a predicate for the potential new sentence under § 1941 of the New York Penal Law.

Order of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the nineteenth day of April one thousand nine hundred and seventy-one.

Present: HON. LEONARD P. MOORE,
HON. HENRY J. FRIENDLY,
HON. ARLIN M. ADAMS,
Circuit Judges.

UNITED STATES ex rel. WILLIAM C. STUBBS,
Relator-Appellant,

v.

VINCENT R. MANCUSI, Warden, Attica State Prison, Attica, New York,
Respondent-Appellee.

Appeal from the United District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this court with costs to be taxed against the appellee.

A. DANIEL FUSARO,
Clerk.

A true copy,
A. DANIEL FUSARO,
Clerk.

Denial of Petition for Rehearing and Petition for Rehearing in banc by United States Court of Appeals for the Second Circuit is Printed in the Petition for Writ of Certiorari at pp. 1a and 2a.

Judgment on Order of Court of Appeals.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES ex rel. WILLIAM C. STUBBS,

Relator-Appellant,

v.

VINCENT R. MANCUSI, Warden, Attica State Prison,

Respondent-Appellee.

The order of the United States Court of Appeals for the Second Circuit dated the 19th day of April, 1971, having been filed in this court on the 27th day of May, 1971,

IT IS ORDERED, ADJUDGED AND DECREED that said order is made the order of this court.

HAROLD P. BURKE
Harold P. Burke
United States District Judge

Dated: June 1, 1971.

Judgment on Order of United States District Court for the Western District of New York, Remanding Petitioner for Re-Sentence.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES ex rel. WILLIAM C. STUBBS,

v.

VINCENT R. MANCUSI, Superintendent, Attica Correctional Facility

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The United States Court of Appeals for the Second Circuit by order entered on its decision of April 19, 1971, reversed the order of this court which denied petitioner's application for a writ of habeas corpus. The petitioner had challenged the sentence under which he was held, sentencing him as a second felony offender. The Monroe County Court considered a prior conviction of murder obtained against the petitioner in Tennessee, and found him to be a second felony offender, and sentenced him to consecutive terms of imprisonment totalling 32 to 34 years.

On the mandate of the Court of Appeals for the Second Circuit, which reversed the order of this court, it is hereby

ORDERED that the petitioner William C. Stubbs, now imprisoned at Attica Correctional Facility, be remanded to the custody of the Monroe County Sheriff at Attica Correctional Facility to be promptly returned by the Monroe County Sheriff to the Monroe County Court for re-sentence of the sentence of October 7, 1966, upon his conviction of assault, first degree, and a violation of Section 1897, Subdivision 2, of the New York Penal Law.

HAROLD P. BURKE
Harold P. Burke
United States District Judge

June 16, 1971.

Testimony of Alex Holm and William Charles Stubbs*.

[Pages 174-223; 234-281; 284-288]

STATE OF TENNESSEE

v.

WILLIAM CHARLES STUBBS, Alias

} Sullivan County

ALEX HOLM: DIRECT-CROSS-REDIRECT

WILLIAM CHARLES STUBBS: DIRECT-CROSS

ALEX HOLM: REBUTTAL

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* All the testimony reprinted in this Appendix is contained in the 1964 transcript of William Charles Stubbs' trial in Sullivan County, Tennessee. Page references in parentheses are to this 1964 transcript, which is part of the record before this Court. The testimony of Alex Holm was taken at Stubbs' first trial in 1954, and read in its entirety into the 1964 transcript by a court reporter, Mrs. Elena Harris.

(174) ALEX HOLM, called as a witness by and on behalf of the State, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith*:

Q. You are Mr. Alex Holm? A. Yes, sir.

Q. What is your age, Mr. Holm? A. I was sixty-two past.

Q. Sixty-two past? A. Yes.

Q. Where is your home? A. Karnes City, Texas.

Q. I want you to talk out loudly and distinctly Mr. Holm, so the jurors can hear you testify. Where is your home? A. Karnes City, Texas.

Q. In the State of Texas? A. Yes.

(175) Q. What is your occupation? A. Farmer.

Q. How long have you followed that occupation?

Mrs. Harris**: Do you want me to read the objections?

The Court***: I take it, you want the objections, Gentlemen, or not?

Mr. Haynes****: We will waive them.

The Court: Well, go ahead.

Mr. McInturff: We except to that. That is immaterial.

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* At the 1954 trial of William Charles Stubbs, the Attorney General was H.C. Smith. Defense counsel were B.C. McInturff, Preston Taylor, and Kenneth Wright.

** Mrs. Harris was the court reporter who was reading Mr. Holm's testimony into the record in 1964.

*** Interruptions of Mrs. Harris' reading by the 1964 Court are included herein.

**** David S. Haynes was defense counsel in 1964; his remarks are included herein.

The Court: They may go into it.

Q. Have you been a farmer all your life? A. All my life.

Q. Are you now a widower? A. Yes, sir.

Mr. McInturff: We except to that.

Q. Do you have any children, Mr. Holm? A. Seven.

Q. Seven children?

Mr. McInturff: Just a minute. We except to that, if Your Honor please. That is immaterial. It is calculated and designed to build up prejudice in the minds of the jury.

The Court: I think that both sides may go into background to some extent, but not in great detail, but the jury is entitled to know something about each witness.

Mr. McInturff: We save exception.

By Mr. Smith:

(176) Q. Mr. Holm, you said you were a widower. How long has it been since your wife passed away? A. It was on the 11th day of June.

Q. 11th of June, 1954? A. Yes, last June.

Mr. Haynes: Now, we except here, if Your Honor please.

The Court: What is your exception?

Mr. Haynes: Excepting to this next question and answer.

The Court: What is the question? Read it to me.

Q. Where did she die, Mr. Holm—in Sullivan County, Tennessee?

Mr. Haynes: There is no preliminary showing that she died in his presence and we have no opportunity now to cross examine on that.

The Court: What was the ruling of the Court in that?

Mr. Harris: There was no objection at the time.

The Court: No objection. Well, go ahead.

Q. Where did she die, Mr. Holm, in Sullivan County, Tennessee? A. Yes.

Q. How did you and Mrs. Holm happen to be in Sullivan County, Tennessee? A. Well, we started out on this trip.

Q. When did you leave Texas? A. On the 9th.

(177) Q. June 9th? A. Yes.

Q. Where were you enroute to, Mr. Holm? A. Providence, Rhode Island.

Q. How many of you were in the car? A. Two of us.

Q. Just you and Mrs. Holm? A. Yes.

Q. Where were you born, Mr. Holm? A. Sweden.

Q. Sweden? A. Yes.

Q. Where was Mrs. Holm born? A. In Sweden too.

Q. What was her age, approximately, Mr. Holm? A. Well, she was five year older than I was.

Q. She would be approximately 67? A. Sixty-seven.

Q. How long had you and she lived in the United States?

Mr. McInturff: Just a minute. Now with great respect to everybody, we except and say that he is going too much into detail in preliminary matters. We suggest that he go into the case.

The Court: Objection overruled as to that question.

Mr. McInturff: Save exception.

Mr. Haynes: We want the Court to rule on that objection.

(178) The Court: Overruled. Go ahead.

Mr. Haynes: Save our exceptions.

Q. How long had you lived here? A. Well, I have been here 44 years.

Q. Forty-four years? A. Forty-four years.

Q. Were you and she naturalized citizens? A. Yes, sir.

Q. I believe you said you left Texas on June 9? A. Yes.

Q. How were you traveling, Mr. Holm? A. In a car.

Q. Automobile? A. Automobile, yes.

Q. What kind of a car was it? A. A Ford, two door.

Q. What model? A. '51.

Q. A 1951 two-door Ford? A. Yes.

Q. Six cylinders or eight cylinders? A. Six cylinders.

Q. What kind of license was on that car? A. Well, it was a regular Texas license.

(179) Q. You had a Texas license? A. I had a Texas license.

Q. Do you remember the license number off-hand? A. No, I don't.

Q. You don't? A. No, I don't. No, I don't.

Q. What route did you follow in making the trip through the State of Tennessee? A. We came up on Highway 11.

Q. Highway 11. Where did you spend the night on the 10th of June? A. Chattanooga.

Q. Chattanooga, Tennessee? A. Yes.

Q. Do you remember whether or not you came through Knoxville, Tennessee? A. Well, if it was on Highway 11, we came through there.

Q. Do you remember any towns you passed through, Mr. Holm, before you reached the Town of Rogersville? A. Right there, the next down here, Rutledge.

Q. You came through Rutledge? A. Isn't there a Rutledge?

Q. That is Rutledge down in Grainger County? A. We had to stop there because they had road machinery there, we had to stop there maybe twenty minutes maybe.

Q. What time were you in Rutledge in Grainger County, (180) Tennessee, if you remember? A. Well, we stayed there a long time and finally a fellow came along the side and I asked him if we had to stay and eat dinner.

Q. Did you stay there up until noon? Did you eat dinner in Rutledge? A. No, we didn't.

Q. What did you do after you left Rutledge? A. We decided—we find out our clock was too late.

Q. You mean you had been using Central Standard Time? A. Yes.

Q. You were now in the Eastern Standard Time Zone? A. Yes. So we move our clock up. The next roadside table we get we thought we eat dinner.

Q. Where was that roadside table where you and Mrs. Holm stopped to eat your dinner? A. Well, we went on up and I didn't see it until it was too late. So, she said, we will get the next one and it happened to be up there by the Cherokee Lake after you pass that bridge.

Q. You passed the bridge and then you came to a roadside table? A. On the left side of the road.

Q. As you came toward Sullivan County, you say it was on the left side of the road? (181) A. Yes.

Q. How close was it to the lake, if you remember?

Mr. McInturff: Just a minute, if Your Honor please. We want to move along with this trial. There is too much leading. There is too much details about insignificant matters. We except. This may go on another hour.

The Court: Objection overruled.

Mr. McInturff: Save exception.

Mr. Haynes: We want this Court to rule on this.

The Court: I sustain the objection. It is a leading question. Go ahead.

Q. Mr. Holm, did you stop at the roadside table? A. Yes.

Q. How long were you there? A. Well, I don't think we stopped over—I don't think it was about 15 minutes, something like that, that's all.

Q. Do you remember the lay of the land around there, Mr. Holm, as to how far off the highway it was and whether or not there was any underbrush or trees growing, and so forth? If you know, tell the jury. A. Well, it was just a nice place with big shade trees, nice shade there, right on that side of the road.

Q. What time was it that you and Mrs. Holm stopped (182) at that roadside table? A. Well, I guess I would say about 12:15 or so, something like that.

Q. About 12:15. A. Something like that, I guess. That is Eastern Standard.

Q. How many benches or seats were there at that table, if you remember? A. Just one. Just one table, that's all, and two benches, one on each side.

Q. One table and two benches? A. Yes.

Q. What happened, Mr. Holm, while you and Mrs. Holm were there eating your lunch? A. Well, we was eating and all of a sudden there was a fellow came along on the side of the road. I didn't see him until about oh, 25 or 30 yards, something like that.

Q. Where was he when you first saw him? A. On the lower side of the table. He came walking up.

Q. What is on the lower side of the table you speak of? A. Well, it is a little uphill, if that is what you mean.

Q. Where is part of Cherokee Lake with respect to where you were sitting? A. Well, it is on the lower side I am pretty sure.

Q. Which direction did this party who came up come from? A. He came from down there.

(183) Q. What did he say to you or what did he do? A. Well, first thing he said it was pretty hot to be out walking, he said, and I said right there there was pretty nice shade though. Then he said, "I see your license is from Texas. Well I am from Texas too."

Q. The man said he was from Texas too? A. Yes, and he was on the way to New York.

Q. Did he say that? A. Yes, that is what he said.

Q. How long did you talk to him? A. Well we was sitting there eating and minding our own business and we didn't talk much. He said he had been down there fishing, but he can't catch anything, he said. That's all. We didn't talk to him, I mean we was trying to eat and mind our own business. He after awhile, he got out a road map and looked at it.

Q. Who had the road map? A. He did.

Q. He had one? A. Yes.

Q. What further conversation did you have with him? A. Not hardly anything there at the table. Just when we got through eating, why he stuck his road map down in his pocket and walked off.

Q. Mr. Holm, who is the man that you saw down at that (184) roadside table? A. He is sitting back there (indicating).

Q. Point him out. A. Right there (indicating).

Q. You are pointing toward Mr. William Charles Stubbs, this defendant? A. Yes.

Q. Is he the man? A. Yes.

Q. Go ahead and tell the jury what else happened after he stuck his road map in his pocket. A. I thought he walked off. Instead of that, we had our car kind of up off the—kind of on the upper side sort of. He walked around on the upper side and came back on the back side. When I got ready to put the things in the car, he stood there behind there with the gun in his hand.

Q. What kind of gun was it, Mr. Holm? A. It was a revolver.

Q. A pistol? A. Yes.

Q. What did he do with that pistol while he was standing there with it? A. He told us to get the things in the car. He said, "This is the way I am going to catch my ride (185) to Bristol and I am going to do the driving."

Q. He said, "I am going to do the driving"? A. Yes.

Q. Is that you talking or Mr. Stubbs talking? A. No, that was Mr. Stubbs talking. That is what he said.

Q. What did you and Mrs. Holm do at that time? A. Well, we tried to talk him out of it, prolong it, but he said, "If you just don't get in the car why I will kill you both and drag you down in the lake."

Q. How far was it to the lake? A. It was just a little back below there, but we was down the other day, it is kind of dried up now.

Q. What is between this roadside table and where the lake was? A. Well, it is just a high bluff there, that's all.

Q. How high is that bluff? A. Well, I couldn't say.

Q. About how high? A. It is about—

Mr. McInturff: We except to going into all that.

Mr. Smith: All right.

Q. Mr. Holm, you said you and Mrs. Holm tried to argue him out of it. Do you remember what you said to him in your conversation? A. Well, we tried to argue him out of it and talked to him in prolonging it so maybe some- (186) body could come along and see. But he had a bundle in his hand and he held that pistol next to the bundle. He had his gun in his left hand.

Q. Which hand did he have it in? Show the jury. A. He had a bundle in his right hand under his arm like this and he had a pistol in his left hand like that.

Q. Then what happened? A. Well—

Q. How long did you stay there before you left? A. Well, it didn't take long because he told us to hurry up and get in the car.

Q. Who got in the car first, Mr. Holm? A. I got in the . . . I mean, my wife.

Q. Then where did you get in the car? A. I got in the car too.

Q. Which seat? A. I will take that back. I couldn't say which one got in first. I wouldn't say.

Q. Which seat? A. In the back seat.

Q. How did you happen to get in the back seat? A. He told us.

Q. He told you and Mrs. Holm to get in the back seat? A. Yes, we had a suitcase. We told him we couldn't get in there. He told us to get that suitcase up in the front seat, throw that suitcase up in the front seat.

Q. Did you have anything, any luggage or anything (187) else in the back seat? A. Yes, we had some boxes and oh, some stuff, clothes and stuff like that, what we used on the road.

Q. In the back seat where did Mrs. Holm sit and where did you sit? A. Well, she was sitting just about nearly in the middle of the seat, because there was a bunch of boxes and stuff on the left-hand in the back seat, and I was sitting right down in the corner there on the right-hand corner in the back seat.

Q. She was sitting in the middle of the back and you were sitting on the right side? A. Yes.

Q. Who drove the car? A. Stubbs did.

Q. What did he do? What did he do with this pistol, you say he had it out in his left hand before you got in the car. What did he do with the pistol? A. He had it in his left hand all the time.

Q. How did he drive the automobile? A. With the right hand, just with one hand.

Q. How did he hold the pistol? A. Just like this all the time.

Q. You have the pistol down just below your belt buckle? A. Yes, just in his lap.

Q. Which way was it pointing? A. Just toward us.

(188) The Court: Now, just a minute, this is going to take a good while and it is twelve o'clock right now. So, you mark the page and will come back after lunch.

Examination by Mr. Wooten*:

Q. Mrs. Harris, you now have the original record before you that you had before we adjourned for lunch? A. I do.

Q. Would you read from the point that you left off? A. Yes, sir.

Back to Reading of the Original Trial.

Q. What conversation, Mr. Holm, did the defendant Stubbs and you and Mrs. Holm engage in as you came up the road? A. Well, there wasn't much said after we found out there was pressure, there wasn't much said.

Q. Did he tell you where he was going?

Mr. Taylor: We except to leading.

A. No, he didn't say then. He did say before he said he was going to Bristol, that's all.

Q. Were you going to Bristol? A. I was going to go through there, yes. The road goes through there.

Q. Had you ever been to Kingsport, Tennessee before, Mr. Holm? A. No.

Q. Did you come through Kingsport then? (189) A. Yes, we came through there.

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* John C. Wooten was the Attorney General at the 1964 trial.

Q. As you came through Kingsport, Tennessee, what did he do with the pistol? A. Well, he had it there in his hand all the time.

Q. From the time you left the roadside table, did he ever put the pistol anywhere except hold it in his left hand? A. No, he didn't.

Q. After you left Kingsport, what, if anything, occurred, Mr. Holm, what conversation? A. Well, there wasn't very much said, just a word every now and then. My wife told him to drive careful.

Q. What did he say to her? A. Well, he said, don't worry about that, I am a stock car driver, he said.

Q. He was a stock car driver? A. Yes. I have been driving stock cars.

Q. Mr. Holm, did at any time you or Mrs. Holm tell the defendant Stubbs or did he ask you what your destination was or where you were going? A. No, sir.

Mr. McInturff: We except to leading.

Q. Did you have any funds, any money or other negotiable instruments with you on that occasion? A. Yes.

Q. What did you have? (190) A. I had oh, practically $1,400.00, something like that.

Q. $1,400.00? A. Yes, that is in traveler's checks and cash.

Q. What did you carry that in, Mr. Holm? A. Well, traveler's checks, we had that in a little suitcase.

Q. Where did you have your money? A. In the pocketbook.

Q. Who had the pocketbook, you or Mrs. Holm? A. No, I had the pocketbook.

Q. What, if anything, happened with respect to your pocketbook here in Sullivan County, Tennessee, Mr. Holm? A. Well, we had some clothes hanging up on the right-hand side, and getting those clothes out of the way, I had the pocketbook in this pocket (indicating).

Q. That is your right pocket. A. Yes. That is I had practically $200 in that, I think, and I got that out and threw it back there to my wife.

Q. How did you throw it back there? A. It was just behind this way (indicating) and she noticed it and put it down in the bottom of the car.

Q. Put it down in the bottom of the car? A. Yes.

Q. What, if anything, did the defendant, Mr. Stubbs, do when you and Mrs. Holm were making an exchange of that (191) pocketbook? A. No, he didn't say anything then, but there was the one instance, the boxes, she didn't get enough room, so he told her to keep her hands up and don't fool around with anything.

Q. What did you and Mrs. Holm do with your hands at the time? A. I had my hand up on the seat there.

Q. Why did you have them up on the seat? A. Well, he said to keep your hand on the seat.

Q. Just show the jury. A. Just like this on the back seat (indicating). We didn't have room to sit back, we had to sit up like this.

Q. Where did Mrs. Holm have her hands? A. She had them in her lap. She didn't have them on the seat; just in her lap.

Q. You say you sat forward on the back seat? A. Yes.

Q. Why did you do that? A. Well, there was not room enough for both of us, just crowded sort of, we had to sit up there.

Q. Why did you have your hands on the back of the front seat? A. That is the way I had to sit. He said keep your hands there, he said.

Q. Out of Kingsport, Mr. Holm, what direction did he drive the automobile? A. Just on the same road, on 11-W.

(192) Q. That was 11-W? A. Yes.

Q. Did anything happen between Kingsport and Blountville, that is from the time you left Kingsport and came through this town of Blountville? A. No, I don't think so.

Q. Did you come through Blountville? A. Yes, we came through here.

Q. After you passed through Blountville what happened, Mr. Holm? A. Well, he—we had a map, looking at the map, we—

Mr. Haynes: The answer to the next question—I mean the objection to the next question was sustained, Your Honor.

The Court: Yeah, go ahead.

Q. Just describe what he did, Mr. Holm. A. Well, he was driving along, but he was just looking first one place and then another and looking at his rear mirror. When we got to that place he started shooting.

Q. What place was that? A. Well, it is up there where it happened. I couldn't describe it exactly here because I am a stranger.

Q. How soon was that after Mrs. Holm said, we are getting near Bristol?

Mr. McInturff: Wait a minute, there has been no statement (193) here that she said that. The only statement is Mrs. Holm said nothing much.

Q. What conversation, if any, did anyone have about Bristol? A. Well, she said that I guess—

Mr. Haynes: We would like for Your Honor to rule on that.

The Court: Yeah. I will sustain that.

Q. When she said we are getting near Bristol, what did the defendant, Stubbs, do?

Mr. Haynes: We object to that, Your Honor, that objection was sustained on line nine.

The Court: Well, omit it.

Q. Mr. Holm, from the time you left the roadside table until you got to the town of Blountville and slightly east of this town, was any adjustment made in your rear vision mirror or did you notice anything about that? A. He did that.

Q. What did he do with it? A. He adjusted it so he could see, because he was smaller than I was. He had to adjust it.

Q. You are about a little over six feet tall, I guess? A. No, five, ten.

Q. How much do you weigh? A. Well, I used to weigh 200.

Q. You don't weigh that much now? A. No.

(194) Q. You say when you got slightly east of Blountville something happened. What did happen, Mr. Holm? A. That is where he started shooting.

Q. Which hand did he have the pistol in at that time? A. Left hand.

Q. What did he shoot at?

Mr. Haynes: Objection, Your Honor, that is sustained on line 13.

The Court: What question was sustained?

Mr. Haynes: What did he shoot at?

The Court: Go ahead. I mean go ahead and read something else.

Q. When he shot, did he say anything, Mr. Holm? A. No, he didn't say a word.

Q. Where did he hit you? A. In my face.

Q. Put your finger up to where he hit it. A. One bullet went in here and one here (indicating).

Q. You are pointing up close to the inside corner of your left eye, is that correct? A. Yes, he shot my glasses.

Q. Do you have your glasses here? A. Yes.

Q. Let us see them, Mr. Holm. Mr. Holm, I hand you a pair of glasses, the right lens is in the glass and the left lens is not.

(195) Mr. Taylor: Just a minute, Your Honor, Just a minute, Mr. Attorney General. We except to him describing all these exhibits.

The Court: Gentlemen, the physical object is that way.

Mr. Taylor: The jury can see it just as good as he can describe it.

The Court: That is for the record.

Q. Mr. Holm, as you rode up the road, were these glasses in the same shape they are in now? A. Just about.

Q. What happened to them? I mean was one lens broken out before that time? A. No, sir, they was new.

Q. Were you wearing them? A. Yes, sir, I had them and I had to wipe my face off and then I noticed they was on. I didn't know they was broke until it was all over broke.

Q. What happened to them up there, Mr. Holm? A. Well, that bullet that hit me down here, why it broke the lens and it broke this (indicating).

Q. Will you file these as an exhibit to your testimony? A. Yes. And they were filed as an exhibit.

Q. Where else were you shot? You pointed to the corner of your eye? A. It was right here, just like you . . .

(196) Mr. Haynes: We object to that, Your Honor. He can describe its effect.

The Court: Yeah, I think that is sustained. Go ahead and tell where it hit. He can say where it hit.

Q. You are pointing to your cheek, right back of the corner of your mouth? A. I think you can see it.

Q. That is about an inch back of the corner of your mouth. A. Yes. That is where he operated, took it out. It stuck up there.

Q. You are pointing about two and a half inches behind that, next to your jaw. A. That's right.

Q. How many times were you shot? A. Twice.

Q. What happened to Mrs. Holm? A. She was shot once.

Q. Where was she shot, Mr. Holm?

Mr. Haynes: Now, we object to that at this time as describing where this bullet went.

The Court: Well, let her say where it hit. Let me see it.

Mr. Harris: Well, about on the same side . . .

The Court: I will let that much of it in.

A. Well, about on the same side.

Q. That is three shots. You were shot twice and she was (197) shot once. Were there any other shots fired? A. Yes.

Q. How many? A. When he started shooting, I jumped up and grabbed the gun. Of course, I was too late. He already shot her, but there was one shot fired after that. It went up in the top of the car.

Q. Mr. Holm, I hand you a picture and ask you who that picture is of.

Mr. Haynes: If Your Honor please, we except at this time. At the previous trial, the witness went on to explain what was in the picture and the court sustained that.

The Court: Was that the picture that you had here?

Mr. Haynes: Yes, Your Honor.

The Court: Well, I sustain the objection.

Mr. Haynes: Now, we object to the line of questioning.

The Court: Well, I will have to hear the question first.

Mr. Haynes: Your Honor, it was sustained by the Court . . .

The Court: I know, but what is the question? I don't feel that way about it.

Mrs. Harris: Mr. Holm, where was your wife shot?

The Court: Well, I sustain that.

Q. Mr. Holm, where was your wife shot? A. On the left side.

Q. Use your finger and show the jury about where. (198) A. Well, it was in the neighborhood around here somewhere (indicating.)

Q. You are pointing on the left? A. Yes, on the left side.

Q. About an inch and a half or two behind your mouth? A. Somewhere up in here.

Q. What happened to her, Mr. Holm? A. Well, she died.

Q. Where did she die? A. On the roadside.

Q. Mr. Holm, you say you scuffled with him for that pistol? A. Well, I just jumped on him and jerked that pistol away from him. I didn't scuffle.

Q. You jerked the pistol away? A. I jerked the pistol away.

Q. How long did it take you to get that pistol away from him? A. It didn't take no time. When I jumped on him and jerked that pistol away there was a shot went up.

Q. Use gestures to the jury and show how you got the pistol away from him. Use your hands.

Mr. Haynes: I object at this point, in that the gestures could not be seen by this jury.

The Court: Yeah, I sustain it. Go ahead to the next question.

(199) Q. You got a blister? A. Yes, on the finger.

The Court: Wait a minute.

Mr. Wooten: Your Honor, they were objecting to gestures and of course, there is no gestures in there. Describe any words . . .

The Court: Well, the words are in the record. Read the question and answer and I will rule on it.

Mr. Haynes: Well, Your Honor . . .

The Court: I will have to hear it before I can rule on it.

Mrs. Harris: Use gestures to the jury and show how you got the pistol away from him. Use your hands.

The Court: Now, what is the answer?

Mrs. Harris reads answer to the Court.

The Court: He told what happened. He went on and told.

Mr. Haynes: This is not in response to the question, Your Honor. He was asked to use gestures and we didn't . . . we can't tell whether he did or didn't.

The Court: Well, it wouldn't affect the jury one way or the other. Go ahead and read that.

Mr. Haynes: Note our exceptions.

A. I just jumped on him from behind and just grabbed for that pistol and must have jerked it away. About that time there was a shot fired. The last shot went off or a shot went up in the ceiling of the car. I got a blister there on my finger where I grabbed around that barrel, I guess.

(200) Q. You got a blister? A. Yes, on the finger.

Q. After you got the pistol away from Mr. Stubbs, what did you do with it? A. I just started hammering away with that at his head.

Q. At his head? A. Yes.

Q. How many times did you hit him on the head with that pistol? A. Well, I couldn't say, about three or four times, I guess.

Q. Whereabouts on his head was it? A. On top of his head.

Q. Was he still in the front seat? A. Yes. He was trying to get out.

Q. At that time, Mr. Holm, do you know whether Mrs. Holm was still living or whether she was dead? A. Well, when I jumped up, I felt she slumped off kind of back of me sort of.

Q. You and she had been sitting on the back seat? A. Yes.

Q. When you jumped up to get the pistol, what happened to her body? A. She slumped off.

Q. Slumped over? A. I could feel she slumped over, but I didn't (201) have time to attend to her. I had to get him.

Q. What happened to him then, Mr. Holm? A. Well, he was trying to get out, but, of course, the combination of the lock, he tried to get that lever down, he tried that three or four times. Finally he found out it went out. Then he stepped on that brake on the car and slid out backwards.

Q. What happened to the car? A. I got hold of the steering wheel and kind of whirled it around so it didn't hit the embankment, because it was coming right nearly across the road.

Q. Where did the automobile come to rest? A. Down in the ditch. It hit that embankment just a little bit.

Q. How many feet or how far did it go after he shot you and Mrs. Holm? A. I couldn't say. I couldn't say.

Q. Very far or a short distance? A. It was not long, it was just see-sawing across the road a few times.

Q. How did the automobile come to rest, on the north side of the road or on the south side of the highway? A. It was on the right-hand side of the road.

Q. Going east? A. Going that way, yes.

(202) Q. Going that way toward Bristol? A. Yes.

Q. It was on the right-hand side of the road? A. Yes, sir.

Q. What happened to the defendant? A. Well, he just dropped out backwards, sort of, got the door open and dropped out.

Q. Going out head first or feet first, can you tell the jury about that? A. No, when he got I think he just kind of slid out like that backwards.

Q. Mr. Holm, do you remember how the defendant was dressed on that occasion? A. Yes.

Q. Tell the jury what kind of clothing he had. A. He had a pair of blue trousers on, not bluejeans, just blue trousers and a khaki shirt, rolled up sleeves.

Q. Did you notice anything peculiar about his trousers on that occasion, Mr. Holm? A. Well, they was dirty. Then he had a little torn place on the left knee.

Q. Describe that torn place. A. It was up here, sort of a little jag about half an inch or three-quarters inch, something like that.

Q. When did you first notice that? (203) A. After he got in the car. I kind of took a pretty good description of him.

Q. Could you see that place from where you were sitting in the car? A. Yes.

Q. Why were you examining his clothing?

Mr. Haynes: Objection, Your Honor, and an objection was made and sustained by the Court.

The Court: As to why he was examining his clothing?

Mr. Haynes: As to why he was examining his clothing and the answer was unresponsive.

The Court: Let me see it.

Mrs. Harris: He says, yes, I think anybody would.

The Court: Yeah, sustain the objection.

Q. You did see it, you say?

Mr, Haynes: Objection there, Your Honor. It was sustained by the Court.

The Court: Yeah, sustained.

Q. Mr. Holm, did you or Mrs. Holm either one use any weapon or threaten the defendant on that occasion? A. No, sir. No, sir.

Mr. Haynes: We object, Your Honor please here to this next question. It was leading.

The Court: Let me see. Don't answer that question. Omit it. Is that the one that you are talking about?

(204) Mr. Haynes: Yes, Your Honor.

Q. Mr. Holm, how far from Blountville was it? You have been over that road since. Could you tell about how far it was?

Mr. Haynes: Your Honor, we ask the court to rule on this.

The Court: Read the question and answer to me.

Mrs. Harris: Mr. Holm, how far from Blountville was it? They—you have been over that road since. Could you tell about how far it was?

A. Well, I don't know from Blountville. They said it was about five miles from Bristol, I think.

The Court: Well, just leave it the way it is. Sustained.

Q. Did that shooting occur in Sullivan County, Tennessee, near the town of Blountville? A. Yes, they said it was in Sullivan County.

Mr. Haynes: We object, if Your Honor please to what someone told him. And not what he was purported to know.

The Court: He didn't say somebody told him.

Mr. Haynes: He said, they said.

The Court: Oh, did he? Well, sustain the objection.

Q. Had you ever been here before? A. No, I haven't. This is the first time we had ever been up this way.

Mr. McInturff: We except, if Your Honor please.

Q. Mr. Holm, did that occur on 11-W, Highway 11-W, between the town of Blountville, Tennessee and Bristol, Tennessee?

(205) Mr. Haynes: We except to that question as leading if Your Honor please.

The Court: Yes, it is. Sustain the objection.

Q. After the shooting where did the defendant go after he slid out of the car? A. I never did see him. I never did see him after he got out of the car. I didn't see him no more.

Q. At that time was Mrs. Holm dead? A. No, she was not dead then.

Q. How long did she live after the shooting? A. After the car stopped, I kind of raised her up and called to her and she opened her eyes, which I could see that was just the end of it.

Q. How soon after that did she die? A. It didn't take but just—as soon as the car stopped, I got hold of her and raised her up.

Q. How long after that was it until any person stopped? A. There was people right there it looked like. It didn't take—I don't think it took half a minute.

Q. Almost immediately would you say? A. Yes.

Mr. Taylor*: We except to that.

The Court: Sustained.

A. I called for help.

Q. You called for help? (206) A. Yes, and they stopped.

Q. Who removed Mrs. Holm's body from the car? A. Well, I couldn't say; it was a stranger to me, but he helped me get her out.

Q. Where were you taken? A. We was both taken—I was taken to the hospital there.

Q. What hospital, up at Bristol? A. Bristol Memorial Hospital.

Q. How long did you stay there?

Mr. Haynes: We object if Your Honor please. The question was asked and the answer was given, but—

The Court: Well, I want to hear those gentlemen.

A. Eight days.

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*Mr. Taylor was defense counsel at the 1954 trial of William C. Stubbs.

The Court: Now, read the next one.

Q. Mr. Holm, at the time when you were down at Cherokee Lake, did the defendant, Stubbs over here, drive your automobile with your permission or against your permission?

Mr. Haynes: We object to that question.

The Court: I think that it is suggestive the way that it is. I sustain the objection.

Q. Mr. Holm, when did you next see Mr. Stubbs, this defendant? A. That night.

Q. Where did you see him? A. Up in the hospital room.

Q. How did he happen to come there, Mr. Holm? A. (207) Well, there was officers brought him up there.

Q. Do you remember what officers brought him? A. I think Captain Williamson was along and there was two or three more.

Q. Do you know Mr. Roy Edwards of the Bristol force? A. Well, they was all strangers to me and I was sort of, kind of doped up a little bit, but I had my head clear enough so I could see.

Q. What was Mr. Stubbs doing there at the hospital?

Mr. Haynes: Objection Your Honor, that would call for a conclusion on his part.

The Court. That is right, he wouldn't know. Sustain the objection.

Q. Do you know what time it was? A. No, I don't. I couldn't tell you.

Q. Is this defendant, William Charles Stubbs, the man that was brought at the hospital that night? A. Yes, sir.

Q. Is he the man that shot you and also shot and killed Mrs. Holm?

Mr. Haynes: Object to leading. He is just leading every question right along in there.

The Court: I sustain the objection.

Cross Examination by Mr. Taylor:

Q. Mr. Holm, sir, what time did you say you were there at the (208) table eating? A. It was oh, a little after 12 o'clock.

Q. Little after twelve? A. Yes, if I remember right, it was ten minutes to eleven when we was down at Rutledge. Then I moved my clock up, so I guess it would be a little after twelve o'clock.

Q. You first saw this boy while you were eating? A. Yes.

Q. And he left? A. Well, I thought he left, but he just went around the car.

Q. Now at that time there was nothing to have prevented him from killing you or killing your wife, if he had wanted to, was there, sir? A. Well, I don't know.

Q. You had no gun? A. I didn't have no gun, no.

Q. If he had wanted to shoot either you or your wife, there was nothing to have prevented him from shooting at you, was there, sir? A. I guess not.

(209) Q. Now he left, you say? A. No, he didn't leave. I thought he left, but he went around the car.

Q. He went where? A. He just went up the road, went around the car and came back, on the outside of the car, and I didn't notice that.

Q. He left, he went around the car, and you didn't notice? A. No, because we was eating, with our back to the car.

Q. Just answer my question, and we will get along. A. Yes.

Q. He went around, as you say, to the back of your car? A. Yes.

Q. And as you got ready to resume your trip, he pointed a pistol at you, is that right? A. Well, we had to pack in our luggage in there where we had a little ice-box.

Mr. Haynes: Your Honor, we withdraw that question on line number four.

The Court: Read the question and answer.

Q. After you packed your car, is that when he pointed the pistol?

Mr. Haynes: We don't care to ask the question.

The Court: Well, go ahead and read the rest of what is in there.

A. No, it was before. He told us to get that stuff in there and get it in there in a hurry.

(210) Q. At that time, Mr. Holm, if he had wanted to shoot at you or to shoot at your wife, there was nothing to have prevented him from doing that? A. No. He said if we make an alarm, he said he would kill us both.

Q. There was nothing to have prevented him from taking your car and leaving you there, was there? A. I guess he could.

Q. When you got into the car, I believe you told the jury you were in the back seat, is that right? A. Yes, sir.

Q. Your wife was in the back seat? A. Yes, he told us to do that.

Q. You were on the right? A. Yes.

Q. Am I right there? A. Yes, sir.

Q. Where did he tell you to put your hands or did he say anything about where to put your hands? A. Keep your hands still.

Q. Do what? A. Keep your hands still.

Q. Keep your hands still? A. Yes.

Q. Did he tell you to lay them anywhere? (211) A. I had them on the seat, keep them there.

Q. Did he order to . . . order you to do that? A. Yes.

Q. You put your hands on the seat? A. Yes, keep your hands still, keep your hands there on the seat.

Q. How much money did you have in your pocket? A. Oh, just money, we didn't have but—

Q. Your best judgment. A. About $220, $230, something like that.

Q. At no time on this trip did he make any demand for your money? A. No, he didn't.

Q. How many times did he tell you to keep your hands up on the back of the seat? A. Just one time, I think.

Q. Just once? A. Just once.

Q. When did you move your hands from the seat? When was the first time?

Mr. Haynes: Your Honor, that answer is not responsive. We withdraw that question.

The Court: Read that answer.

Q. When did you move your hands from the seat? When was the first time?

(212) Mr. Haynes: We would like to withdraw the question.

The Court: I don't know whether you can withdraw or not, it is in the record. It is part of the examination and I think that it ought to go in there.

Mr. Haynes: Well, we don't care to ask that question.

Mr. Wooten: Well, if Your Honor please, they just can't pick out things that would be beneficial to them . . .

Mr. Haynes: There is nothing beneficial about it. We would have the right to choose the questions on cross examination if he were here.

The Court: I sustain the objection. Go ahead.

Q. You moved your hands one time as you have told the jury? A. Yes, I got those clothes out of the way.

Q. You moved your hands one time to take a pocketbook

and slide it to your wife? A. That . . . Yes, I had to get —she was sitting on some clothes.

Q. That is the first time, sir, that you moved your hands? A. Yes.

Q. He didn't shoot you then, did he? A. No, he didn't. No, we told him we would get the clothes out of the way. She was sitting on the clothes.

Q. In fact, he told you and your wife both that all he wanted was a ride to Bristol, is that right, sir? A. That was when he first came in and demanded he was going to do the driving.

(213) Q. The only time you found different was when you claimed that you got shot, is that right? A. That's right.

Q. Did he ask you for any food? A. No.

Q. At no time? A. No, he didn't.

Q. Are you sure of that, Mr. Holm? A. Yes.

Q. I believe you have told the jury that when you got out of Blountville, where this alleged shooting took place, that there were no cars either going or coming that you could see? A. Just right there, yes.

Q. How far down the road, how far toward Bristol could you see up the highway? A. Oh, I don't know, just—well, quarter of a mile, that little stretch of road.

Q. I beg your pardon? A. About a quarter of a mile. I don't know just exactly, I was a stranger on the place.

Q. Could it have been more than a quarter of a mile? Could it have been a half a mile? A. I don't think it was.

Q. How far back down the road was visible? (214) A. Well, there is a little stretch of road about quarter mile long.

Q. In other words, under your testimony, it was a distance of half a mile, that is from where you had come toward where you were going, where there were no cars visible? A. I don't think it is half a mile. It is just a little straight road about quarter mile long; that's all.

Q. Both ways? A. Yes, yes.

Q. Are you sure of that? A. Well, I couldn't say. I am a stranger on the place.

Q. This boy took you, as you testified, through Rogersville. He stopped at all traffic lights? A. No, he didn't.

Q. He did not? A. No, he didn't stop. I think he stopped one time at what is that next place, Kingsport down there, I think we had to stop one time. Otherwise he kind of drove so he came through green lights.

Q. I mean he obeyed all the traffic signs? A. Yes, he did.

Q. Through Surgoinsville, or do you recall the town of Surgoinsville? A. No, I don't.

Q. Through Church Hill and also through Kingsport and through (215) Blountville? A. Yes. I know the place Kingsport.

Q. If he had wanted to shoot you, nothing would have kept him from it, would there, sir? A. Well, there was traffic there, there was cars coming and going all the time.

Mr. Taylor: I believe, Mr. Holm, you can come aside.

Your Honor, we may want to call him back for further cross-examination.

Redirect Examination by Mr. Smith:

Q. Mr. Holm, I show you a picture of a roadside park and table, and I will ask you if you have ever seen that roadside table before?

Mr. Haynes: We object to that, Your Honor, the . . .

The Court: Let him answer it.

Mr. Haynes: It about the photograph.

The Court: Photograph of the table.

Mr. Haynes: Well, we don't know what it is a photograph of he didn't identify it.

The Court: I don't know whether he did or not. Let's see what the answer is.

Mr. McInturff: We except to that unless it is shown that the conditions as portrayed in that picture existed on this (216) day of June 10 or 11.

The Court: Ask him if there is any difference.

Q. Mr. Holm, I believe you said this was June 11, 1954? A. Yes, sir.

Q. When were you back down there at this same roadside table? A. Well, they took me down just the other day.

Q. Last Friday? A. Yes.

Mr. McInturff: Just a minute. We except to this.

Q. Were the conditions approximately the same, Mr. Holm? A. Yes, sir.

Mr. McInturff: We except.

Mr. Haynes: We except to this . . .

The Court: He said the conditions were approximately the same. I will let him answer it. He didn't say that there was any difference.

Mr. Wooten: If Your Honor please, there has been ten years elapsed in this trial and there was many things available to us that are no longer available . . .

The Court: Well,

Mr. Haynes: We object to his tell what is available and what is not.

The Court: Well, it don't make any difference one way or the other. Go ahead and read.

Testimony skips over to page 114 of the original transcript.*

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* This reference is to the 1954 transcript.

Alex Holm—Redirect.

(217) ALEX HOLM, recall as a witness by and on behalf of the State, having been previously sworn, testified further as follows:

Redirect examination by Mr. Smith:

Q. Mr. Holm, you are the prosecutor and have testified this morning in this case? A. Yes, sir.

Q. Mr. Holm, when you first saw this defendant, did you notice as to whether or not he was clean shaven or what the condition of his beard was?

Mr. Haynes: An exception was made at that point.

The Court: I think it would be material, gentlemen and I am going to let it in.

Mr. Haynes: Alright, we save exceptions.

A. No, he had about three, four days' growth beard.

Mr. McInturff: Just a minute. We except on another ground. This witness testified heretofore and did not testify to that. Now they bring another witness on or two more, who testify to it, and then they put him back on to substantiate their testimony, and we say that is not proper conduct in the trial of the case.

The Court: Overruled.

Mr. McInturff: Save exception.

Q. Mr. Holm, I hand you a pair of trousers that has been introduced as an exhibit to certain other witness' testimony, (218) and ask you if you have ever seen that pair of trousers before?

Mr. Haynes: We object to that, if Your Honor please.

The Court: What is the objection?

Mr. Haynes: Well, in the transcript, they apparently handed the witness a pair of trouser . . .

The Court: You don't have the trousers, here, do you?

Mr. Wooten: I am afraid they are gone.

The Court: Well, if they don't have the trousers, they don't have them. Ask the question and answer again and I will see whether or not . . .

Q. Mr. Holm, I hand you a pair of trousers that has been introduced as an exhibit to certain other witnesses' testimony, and ask you if you have ever seen that pair of trousers before? A. Yes, sir.

Q. Where did you see them, Mr. Holm?

Mrs. Harris: That is what they objected to.

The Court: Well, read the answer.

A. On Mr. Stubbs.

Q. On Mr. Stubbs? A. Yes.

Q. This morning, Mr. Holm, you testified that while you were in the car . . .

Mr. Taylor: We except to that. The trousers speak for (219) themselves.

Q. Will you point out the slit place in the trousers—

The Court: Wait a minute. Omit that.

Q. Mr. Holm, I hand you a 32 pistol which has been introduced as an exhibit to other witnesses' testimony. Have you seen that gun before or if so, where did you see it,

Mr. Holm? A. Well, that is the one I jerked away from Mr. Stubbs. I just grabbed it just like that. I don't know, anyhow, I grabbed it.

Q. Is that the pistol you grabbed from Mr. Stubbs? A. Yes, one like it.

Mr. Taylor: We except to that as leading.

Mr. Haynes: We except to it too, Your Honor. That has been gone over before.

The Court: Alright, go ahead.

Q. Where did you leave the pistol, what happened to it? A. When he stepped on the brake and tried to get out of the car, I lost my balance, to grab the wheel on the car, to keep from getting into the ditch, I just dropped it on the floorboard in the back.

Mr. Haynes: Now, we except to the next question.

The Court: Let's see it. Well, go ahead to something else.

Q. Mr. Holm, up until the time that the defendant Stubbs got in the car at the roadside table, was there any pistol or (220) other sort of firearms in that automobile? A. No, sir.

Q. Did you examine the roof or the top part of this automobile after this occurrence, Mr. Holm? A. Well, not then, but I saw it after I got out of the hospital.

Q. And what did you see? A. I saw that dent where that bullet went up.

Q. Where was the dent? A. I saw that dent where that bullet went up right in the middle of the front seat sort of.

Q. Was that dent in there prior to the time your wife was shot, Mr. Holm? A. No, sir, it just happened then.

Q. Sir? A. It happened at that time when I grabbed that pistol.

Mrs. Harris: And then he was excused.

Mr. Haynes: Now, we have questions that we would liked to have asked this witness were he available and we would like to read them into the record at this time.

The Court: I don't understand you.

Mr. Haynes: We have further questions of cross examination that we would like to ask Mr. Holm, were he here. Well, the Court will hear them, here, but not in front of the jury. He is not here and he can't answer them.

The Court: Well, you can do it later, gentlemen.

(221) The Court: Now, do you have any other witnesses that you want to put on?

Mr. Wooten: Yes, Your Honor, we would like for her to read some more while she is on the stand.

The Court: Alright, go ahead.

Mrs. Harris: On page 195 there is some more redirect.

The Court: I wish we had another copy here. I am at a little disadvantage to you gentlemen. You are getting ahead of me.

Mrs. Harris: Alex Holm, the prosecutor, was recalled as a witness on behalf of the State, and testified further as follows; Redirect examination by Mr. Smith. Mr. Holm, when the defendant—

Mr. Taylor: At this time we want to make an exception to the redirect examination of this prosecutor. This is the third time in this trial it has taken place. The State puts on one or two witnesses; puts on the prosecutor; puts on one or two witnesses and brings the prosecutor back for redirect examination to help substantiate what has previously been testified. We except to it.

Mr. Haynes: We would like for this Court to rule on that.

The Court: Overruled. The Court ordinarily allows that where there is something that hasn't already been brought out. I sustain the objection.

Mr. Wooten: Your Honor please . . .

(222) The Court: I sustained it. There is no use in your arguing.

Mrs. Harris: Let me make this observation, if the Court please . . .

The Court: Wait, I don't want his observation. Just go down and get the evidence there.

Q. (By Mr. Smith) Mr. Holm, when the defendant Stubbs got into your car in Hawkins County, did he have any blood on the shirt he was wearing? A. No, sir.

Q. When you were in that automobile some short distance east of Blountville, when you were shot, did you bleed?

Mr. Haynes: Now, Your Honor, this was grossly leading.

The Court: Read the question, but don't read the answer.

Q. When you were in that automobile, some short distance east of Blountville, when you were shot, did you bleed?

The Court: Well, I will sustain the objection.

Q. Was it your blood . . . I mean was any blood in your car?

Mrs. Harris: Do you . . .

Mr. Haynes: We object here.

The Court: I will allow him to say whether there was any blood in the car or not. Go ahead and answer the next question.

Mrs. Harris: Well, the Court said, well, let him go ahead and answer the next question if he abandons that one.

Q. Before the defendant got in your car, Mr. Holm, was there any blood on the seat and in your car? (223) A. No sir.

Q. When you were shot and Mrs. Holm was shot, did you bleed and did she bleed? A. Yes.

Mr. Taylor: We except to that question on the ground, may it please the Court, it is leading and it is suggestive.

The Court: Suggestive.

Mrs. Harris: Were you standing up when you hit him in the head with this pistol or sitting down?

Mr. Taylor: We except to that, to repeating testimony. It is calculated to arouse prejudice . . .

The Court: I don't believe that they ever asked that question. Go ahead and read the answer.

Q. How were you in that car when you were hitting him in the head? A. I was standing up.

Q. Did you see your automobile later, Mr. Holm? Did you have any blood in the front seat later?

Mr. McInturff: We except to that.

A. Yes, I saw blood all over it.

Q. How did the blood get on the front seat? A. From my face I guess.

Q. Were you standing over the front seat? A. Yes.

* * *

(234) Mr. Haynes: I have some while the jury is out . . . I have some questions that I would like to . . . would like to have asked Mr. Holmes, had he been here as a witness, Your Honor.

The Court: Yeah, go ahead and tell . . . go ahead and read them.

Mr. Haynes: At this time, we would like the record to show the questions that the defense attorneys would have insisted on had Mr. Holmes* been here as a witness.

Q. 1. Mr. Holmes, at the time of this shooting, did you have any insurance on your wife and if so, what amount?

Mr. Wooten: If Your Honor, please, questions are objected to at this time.

Q. 2. Have you collected any life insurance on your wife as a result of this?

Q. 3. Mr. Holmes, in reply to Mr. Taylor's question, you stated that Mr. Stubbs took a road map out of his pocket I mean you saw Mr. Stubbs stick a road map down in his (235) pocket and walk off, I would like to ask you how long that time was that took place in there?

Q. 4. Mr. Holmes, you stated that you thought that Mr. Stubbs walked off. I would like to ask you if you saw him walking back and forth, down the road and back up the road and so forth. And ask you if you observed his condition at that time?

Q. 5. Mr. Holmes, you have replied to the questions that the Attorney General asked you instead of quoting, this is the way that I am going to catch my ride to Bristol and I am going to do the driving, I will ask you, could he have said, this is the only way that I am going to catch my ride to Bristol and am going to do the driving?

Q. 6. Mr. Holmes, you replied to the Attorney General that you tried to talk him out of it with reference to taking the automobile. I will ask you what you stated to him in your words at that time?

Q. 7. Mr. Holmes, you stated that you tried to argue him

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*In some portions of the transcript, the name Holm is spelled "Holmes."

out of driving you to Bristol. I will ask you exactly what you stated to him at that time and what he said in reply, if anything?

Q. 8. Mr. Holmes, you say that you can't say which one of you got in the car first, you or your wife. I will ask you if other details aren't as unclear in your mind as that detail?

Q. 9. Mr. Holmes, you answered the Attorney General's question (236) that there wasn't much said after you found out that there was pressure that there wasn't much said. I will ask you what you mean by pressure and how long that lasted?

Q. 10. Mr. Holmes, you were asked the position of your hands while riding in the automobile and you stated that you had your hand on the seat there. I would like to ask you if you had your hand on the seat as you left Blountville and whether or not both of your hands were not back on the back of the front seat as you left Blountville and rode up the road toward Bristol?

Q. 11. And I would like to ask you Mr. Holmes, if it isn't a fact that, as you rode from Blountville toward Bristol, in the back seat of the car, that if you were not in the front right hand corner of the back seat and didn't you reach over and take the pistol off of the seat and proceed to strike Mr. Stubbs on the top of the head with it?

Q. 12. Mr. Holmes, I would like to ask you if you recall as you passed through the City of Kingsport and as you stopped for a red light there, do you not recall a police officer standing near by?

Mr. Haynes: Now, I am sure that there would be other questions, if we had the replies to these.

Mr. Wooten: If Your Honor please, the State enters an objection to all questions asked.

* * *

(237) The next witness, WILLIAM CHARLES STUBBS, after being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Haynes:

Q. Would you state your name? (238) A. William Charles Stubbs.

Q. Are you called, William, Bill, or Charles? A. Bill.

Q. What is your age, Bill? A. 32.

Q. Ten years ago, of course, you were 22 years of age? A. Yes, sir.

Q. Now, I direct your attenion to June 1954, had you started to—

Mr. Wooten: Now, that is leading.

The Court: Yes, it is a little leading. Go ahead.

Q. Now, at that time, had you been discharged from jail in Texas? A. Texas State Prison.

Q. Had you served all of your time, and did you have a clean slate at that time? A. Yes, sir.

Q. Did you get time off for good behaviour? A. Yes, sir.

Q. Where are your folks from and where are they still living? A. Rochester, New York.

Q. And you are not married? A. No, sir.

Q. Is your father alive? A. No, sir.

(239) Q. Is your mother alive? A. Yes, sir.

Q. Is she still living in Rochester? A. Yes, sir.

Q. What other immediate family do you have living there in Rochester? A. I have a sister—

Mr. Wooten: If Your Honor please, I see no materiality in it—

The Court: Well, I will allow what is in now, but go ahead from there.

Q. Do you have other brothers and sisters? A. Yes, sir, I have an older brother and two younger brothers.

Q. Is one of your younger brothers, Don, who is here? A. Yes, sir.

Q. Do you have oth r members of your family—

Mr. Wooten: Your Honor, I—

The Court: Yes, I think that covers it. Go ahead to something else. Alright, I will sustain that objection.

Q. When you left Texas in 1954, how were you traveling? A. I was hitchhiking.

Q. Did you generally know the route you were going to take? A. No, sir.

(240) Q. Alright, did you study any maps to ascertain how you were going to travel? A. Eventually.

Q. What was your financial condition when you left Texas? A. I was broke.

Mr. Chastain: We object to that, Your Honor.

The Court: Well, I will let it in.

Q. What was your reply? A. I was broke.

Q. How did you ascertain that you were going to travel by Routes, what route did you determine to take? Generally, I don't mean specific towns? A. Louisana, Alabama, Mississippi, North Carolina. And Tennessee.

Q. And did you have any possession of a gun as you started off? A. Yes, sir.

Q. And as far as you know, is this the same gun? A. As far as I can tell.

Q. Did you know anything about the countryside or the condition of the country that you were going to be traveling through? A. None other, than swamps and things like that.

Q. What was the purpose of your carrying a gun on you?

(241) Mr. Wooten: Now, here is a convicted fellow carrying a gun. . . .

Mr. Haynes: Now, if Your Honor please, we except to the Attorney General's remark and we move for a mistrial. There is no evidence in the record to sustain that remark and it is highly prejudicial.

The Court: Overruled. And I sustain the objection as to the gun.

Q. As you hitchhiked and traveled, do you remember when you came into the State of Tennessee? A. I believe that it was on the 10th of June.

Q. And do you remember where you came in Tennessee? A. I believe that it was a little town below Johnson City.

Q. Do you know how many rides you caught, one long ride or a number of short rides or what? A. Well, the longest ride that I caught was from Jackson, Mississippi to a little town above Murphy, North Carolina.

Q. As you came ino Tennessee, what was your condition of health and how long had it been before you had eaten—

Mr. Wooten: Now, Your Honor please, that is—

The Court. There is quite a bit involved. Go ahead. I will let you ask a question, but don't just put several of them together.

Q. How did you eat along your trip? (242) A. When the people gave me a ride, some of them gave me coca cola and a cup of coffee now and then.

Q. Had you had any square meals at all since you left Texas—

Mr. Wooten: Your Honor please, he is leading the witness something terrible.

The Court: Just ask him how much he had eaten and let him tell. Don't suggest it. Now, go ahead and answer it.

Q. How much had you eaten since you left Texas, if you recall? A. Three meals and about four coca colas and some coffee in six days.

Q. Six days? A. And six nights.

Q. When you left down below Johnson City somewhere, did you remember who you caught a ride with or where they took you? A. I caught a ride with two police officers and they took me to an all night gas station and informed me which would be my best route.

Q. And as a result of your conversation with them, where were you trying to get? A. To Bristol, Tennessee.

Q. Did you run into another—

(243) Mr. Wooten: If Your Honor please, that is another leading question.

The Court: Well, let's get along. Don't ask leading questions.

Q. What did you learn about the junction of routes at Bristol? A. I understand that there is a truck route from Bristol, Tennessee going through Pennsylvania and New York State and I would be able to catch a ride.

Q. Now, did you catch a ride trying to get up to Bristol? A. I caught a ride with some young fellows and they let me out in Johnson City at the bus station.

Q. And where did you go from there? A. I slept in the bus station from early morning until after daylight until I was run out.

Q. Where did you go then? A. I went up and crossed a set of railroad tracks and there was a garage that had shrubbery around it and I went behind the garage and went to sleep.

Q. Now, did you eventually catch a ride that took you somewhere other than Bristol? A. Yes, sir, it was late that night.

Q. Just tell his Honor and the jurors about anything—

The Court: Let's get on down to this. I don't want to delay you, but let's get on down to this time. (244)

A. I caught a ride with a fellow and I was tired and I asked him if he was going through Bristol and he said that he was and he informed me when he got to Bristol that he would let me out and I went to sleep in his car and I woke up some time later. Sometime late that night and I asked him if we had come to Bristol yet and he stated that he had been thinking about something and forgot me. There was lights up ahead and I had him let me out where the lights were. It turned out to be the Cherokee Motel on route 11-W heading toward Knoxville.

Q. Now, did you spend the rest of that night down in that vicinity? A. Yes, sir.

Q. The next day, do you remember the date of the next day? A. The next morning, June 11th.

Q. And where did you go then? A. I caught a ride—

The Court: Let's get down to the time, gentlemen to the question involved. You are taking up too much time in all of the preliminaries.

Mr. Haynes: Well, Your Honor, we don't anticipate but have these two witnesses—

The Court: Well, I want to get along. I have heard (245) all of these things that he has done. Now, let's get down to it.

A. I caught a ride down to a truck stop near Cherokee Lake Bridge and the fellow turned around and went back and I went in there that was supposed to have been a truck stop. That particular station, they said that there wouldn't be no trucks along until late that night.

Mr. Wooten: If Your Honor please, that is the conversation with someone else.

The Court: Sustain the objection. Now, he can . . . let's get along, gentlemen.

Q. Now, did you catch a ride on up toward Cherokee Lake? Well, this wasn't but a half mile I believe distance from the bridge. From the lake itself.

Q. Now, at this point, what was your physical condition then? A. I needed a shave and I was hungry and I couldn't hardly walk.

Q. Were you having any luck getting a ride? A. No, sir.

Q. Was there traffic or not passing? A. There was a little traffic, but they was going on by.

Q. Did you come onto Mr. and Mrs. Holmes there on the road that day? A. That was later that day.

(246) Q. About when was it? A. I guess it was about noon. I don't know.

Q. And under what circumstances did you come onto them? A. I had been down to the lake soaking my feet and I heard them when they pulled up there at that roadside table and I come up on the road and asked them for a ride. And I saw that they was eating and they had their backs toward the road. So, not to come from behind, I went around and come up in back.

Q. Why had you been down there soaking your feet?

Mr. Wooten: Your Honor, that is not material.

The Court: Let him go ahead and let's get along.

A. My feet had been blistered and the blisters had broke and they was bleeding and I couldn't hardly walk on them.

Q. Alright, now, was there any conversation between you and Mr. or Mrs. Holmes there? A. Mr. Holmes and Mrs. Holmes was eating and I come in front of them and I waited until Mr. Holmes looked up and I said something about good morning or something like that and I asked

them for a ride as far as Bristol. And he said, "Nope, I haven't got any room".

Q. And then what did you do? A. I stood there about three minutes and they didn't pay me no attention and so I walked out in the road.

(247) Q. And then what happened? A. A couple of cars come by and didn't stop and one car pulled up there a little ways and by the time that I got up to it—about the time that I got up to it, he pulled away and said something about getting a horse.

Q. And what did you do then? A. And so I walked back and forth and as I passed where they were, I was hoping that they would notice me and offer me a ride.

Q. And then what took place? A. I watched them until they got done eating and I watched them start putting their stuff in the car and I remembered the gun I had in my belt and I thought that there wouldn't be much wrong with getting a ride if I didn't bother them or take anything that they had or nothing.

Q. What did you do? A. And so I watched them two or three trips from the roadside table putting things in their car. I stood near the back of their car with the gun in my hand down at my side waiting for them to notice me.

Q. Then what did you do? A. When Mr. Holmes noticed me, he said, "He has a gun" and I said, yes, finish putting things in the car and (248) get in.

Q. Did you say anything to him about getting to Bristol at that time? A. No, sir, not at that time.

Q. When did you? A. After I started driving.

Q. What did you say? A. I told him after I got started down the road, Mr. Holmes was a little nervous, and I told him, I said, as long as you don't try to jump me and get this gun, I says, you won't have no trouble, that I want to ride as far as Bristol, Tennessee.

Q. Did you attempt to take anything they had? A. No, sir.

Q. Did you intend to hurt them in any way? A. No, sir.

Q. What did you intend? A. Just to ride as far as Bristol.

Q. How did Mr. Holmes sit in the automobile and where was he seated? A. Mr. Holmes or Mrs. Holmes?

Q. Mr. Holmes? A. Mr. Holmes was sitting in the back seat in the right hand corner.

Q. And where was Mrs. Holmes located? (249) A. Mrs. Holmes was in back of me. In the left hand corner.

Q. Was there anything else in or about the back seat? A. There was some clothes and luggage and stuff.

Q. Was there any conversation about where Mr. Holmes had his hands, did you direct him to put his hands anywhere?

Mr. Wooten: Your Honor please, that is grossly leading.

The Court: Well, if there was any conversation about his hands, answer that.

A. I seen him make some moves and I told him to be still one time.

Q. Now, was there any conversation that—do you know what the first town was that you all came through? A. The first large town was Rogersville, I think, I don't know.

Q. Now, between the picnic table and Rogersville, were there any further conversations? A. Yes, there was.

Q. What was that? A. After I told him that as long as they didn't try to jump and get the gun, there wouldn't be no trouble, I explained to them that I was sorry that I had to get a ride this way, but that it was the only way possible at the time. I told them where I was from and where I had come down from and the condition that I was in.

(250) Q. And what reply did Mr. Holmes make to this? A. Mr. Holmes didn't say nothing to that. Mrs. Holmes

said that if I would have told them back at that roadside table, they would have been glad to give me a ride.

Q. Alright, what, if anything, did you do with the pistol? A. As we approached the outskirts of Rogersville, Mrs. Holmes assured me that they would not cause me no trouble and suggested that I put the gun out of sight while going through town. Because someone might see it and might cause trouble.

Mr. Wooten: If Your Honor please, the conversation that he is now detailing is now dead.

The Court: Well, it is part of the res gestae. I will have to let it in. It is part of it.

A. I laid the gun down on the seat beside me.

Q. How long did that gun stay there in the seat beside you as far as you know? A. As far as I know, the gun stayed there—that is the last that I seen of the gun until I came into court.

Q. Alright, now, did you all go through Rogersville? A. Yes, sir.

Q. Now, did you stay on the main route of 11-W? A. Yes, sir.

(251) Q. Do you remember after you passed through Rogersville, do you remember there being any kind of a traffic control in Rogersville, signals or lights, do you remember anything about that? A. I believe that there was a green light in Rogersville.

Q. And you passed on through? A. Yes, sir.

Q. Now, do you remember what the next town of any size was? A. Yes, I believe that it was Kingsport.

Q. Do you remember there being any traffic control signs in Kingsport, if so, what do you remember about them? A. I don't remember seeing a light, but I know that we had to stop in traffic and we pulled to a dead stop in traffic.

Q. What do you remember about the traffic—about the surroundings there as you pulled to a dead stop? A. Well, as I say, I couldn't see the light, but there was an officer that was standing right outside in the road in the traffic, directing traffic.

Q. Was he a uniformed officer? A. Yes, sir.

Q. Was there any conversation between you and or Mr. or Mrs. Holmes at that time? A. No, sir, all conversation stopped.

(252) Q. Where did you go from there? A. I went through Blountville.

Q. Was the gun still on the front seat? A. Yes, sir.

The Court: Ask him where the gun is. Don't tell him where it was. Be careful and don't lead him.

Q. Do you remember Blountville? A. Yes, sir.

Q. Do you remember coming through Blountville? A. Yes, sir.

Q. What do you remember after you passed through Blountville and headed on up toward Bristol? A. I remember seeing a sign that said six miles to Bristol.

Q. As you came to that portion of the road outside of Blountville, towards Bristol, did you remember there being any . . . what do you remember about this? A. Well, I was a little bit relaxed and . . . well, I figured that if they was going to cause me any trouble, they would have done so back at Kingsport and repeatedly, both of them assured me that there wouldn't be no trouble.

Q. Were the relations friendly then, between you and they . . .

The Court: Just say what the relations was.

Q. What were the relations between you and Mr. and Mrs. (253) Holmes after you put that gun down there on

the seat? A. As far as I know and the understanding was, when I reached Bristol, I would get out and they would continue on their way.

Q. Was there any conversation about that? A. Yes, there was.

Q. What was that? A. They said that they didn't want to cause me no trouble and when I got out, Mr. Holmes would take over and they could continue on their way.

Q. And did you agree to that? A. Yes, sir.

Q. Is that what you were going to do? A. Yes, sir.

Q. Alright, now, as you drove on up toward Bristol from Blountville, what do you recall about that? A. Well, I was relaxed and I figured everything was alright and just a few more miles and I would get out and we come down by the old Draper Corporation as I understand it.

Q. What else do you remember? A. It seems awful strange, but everything just seemed to be awful still and I remember a tree and it just seemed to come up just like that in clear focus, but in a reddish haze. I mean there was no pain or nothing.

(254) Q. Then what happened? A. I felt a sharp pain that seem to start in my head and go all the way down through me and I reached up with both hands and I heard this loud roar, bang.

Q. Was the car moving then? A. Yes, sir, as far as I know.

Q. Then, what was done? A. After this loud bang—

Q. Did you hear any noise? A. No, sir, not then.

Q. Where that—where did that seem to be in relation to your head, the noise? A. It seemed to be all over it.

Q. Alright, then, what did you do after that? A. Stuff started running down my face and down my shirt and all that I could think of that he has got the gun.

Q. What did you do? A. I just went outside through the car door.

Q. How did you get the car door open, do you remember? A. No, I don't even remember that.

Q. Was the car moving or not when you rolled out? A. Yes, sir.

Q. Were you then on the highway? A. Yes, sir.

Q. Do you remember what your condition was on the high- (255) way? A. No, sir.

Q. What did you do then? A. I got up and started running to get away from that area.

Q. And why were you running at that time? A. He still had the gun.

Q. Where did you go, do you recall? A. I remember going over a fence and I run up into a little field and through a little patch of woods and as I started down through two plowed fields, everything went black.

Q. Were you passed out? A. Yes, sir.

Q. What was the condition as to lighting as you came to? A. You could see a short distance. The sun had gone down, I would say like dust.

Q. What did you do then? A. Well, I saw this little road and it seemed to go in a turn up toward the highway and I moved back to that little patch of woods and the shrubbery and I went down that road and started walking up the highway.

Q. Where were you destined to go as you were walking up that little road? A. To get to Bristol and hit the trucks running to New (256) York State.

Q. Did you have any bruise on your head at that time? A. Yes, I did, there was three wounds down here that I could stick that much of my finger down in it. (Indicating.)

Q. Had they been bleeding or not? A. Yes, sir.

Q. Did that blood get on any of your clothing? A. It was all over the front of my shirt.

Q. As you walked up that little gravel road, toward

Mr. Wooten: Now, Your Honor please, I object to his leading—

The Court: Let him state his question.

Q. As you walked along that gravel road, toward U. S. 11-W, did or not, Mr. Bernie Webb come along in his automobile—

The Court: Just ask him who came along. You are leading him.

A. He might have been, but there were several cars that passed me.

Q. Alright, sir, did one finally give you a ride? A. Yes, sir, he come back in the opposite direction.

Q. And what was the purpose of you getting in that automobile? (257) A. He asked me if I wanted a lift and asked me where I was going and I told him that I was going to Bristol and I got in.

Q. When you say Mr. Webb testify here the other day, that was the man I assume? A. Yes, sir.

Q. And where did you all go then? A. We rode a little ways until we stopped at a road block.

Q. Now, when you got in the car with Mr. Webb and rode along there, did you have any idea that Mr. Holmes was injured or that Mrs. Holmes was dead? A. No, I did not. As far as I know, none had been hurt by me.

Q. As you approached the roadblock, about what distance, in your best judgment, about what distance was it up ahead? A. Well, there was lights, I mean I couldn't rightly say, but it wasn't too far.

Q. Was there any conversation between you and Mr. Webb as to what that might be? A. Yes, I believe there was.

Mr. Wooten: I object to that—

The Court: Go ahead and ask another question.

Q. As you approached the roadblock, did you or not stop? A. We stopped.

(258) Q. And what took place there as best as you can recall? A. We sat there until the officer got there to the car and he looked in and Mr. Webbs says, I think this man ought to be investigated. He said, I just picked him up.

Q. And what was done then? A. The car door was opened and I was ordered out and I was told to put out my hands while hand cuffs were being put on and I asked the officer what this was all about and he told me to be still that I would find out soon enough.

Q. Do you know where you were taken? A. I was taken to the Bristol Jail.

Q. And what was done there? A. I was shook down and my billfold was searched and they found that I was released from the Texas Prison.

Q. Then, what did they do there? A. I was then escorted to the hospital.

Q. The same day? A. Yes, sir.

Mr. Wooten: Now, that is leading.

A. Yes, sir, about a half hour later.

The Court: Ask him when it was.

Q. When was it you were taken to the hospital? A. It was within an hour after I was arrested. (259) It was still dark.

Q. Where were you taken up there? A. I was taken to the hospital and had my head sewed up.

Q. Do you know who the doctor was that attended you? A. I guess it was that one that said that he did.

Q. You hadn't known him before, of course? A. No, sir.

Q. Did you still have the same clothes on at that time? A. Yes, I did.

Q. Where were you taken then? A. I was took down in front of Mr. Holmes' room and I stood outside with some officers while some more went in and then I was told to enter.

Q. And at the time that you saw Mr. Holmes there, what did you think his condition was?

Mr. Chastain: Object to what he thought.

The Court: Well, it might be material. I will let him answer it.

Q. Before you saw him in there . . . A. Well, at that time, I didn't know that it was Mr. Holmes.

Q. Were you taken in where you could look at him in the bed? A. Yes, as you go in, there was a bed on the left and there was a person there with the sheet drawn up and (260) bandaged, I think.

Q. Were you able to recognize who it was? A. No, I didn't know who it was.

Q. Did you so state to the officers? A. They didn't ask me. They said something to the man and the man pointed his finger at me and said that is the one.

Q. Then, where were you taken? A. I was took back to the Bristol Jail.

Q. What was done there? A. My clothes, my shoes, my socks, and my shirt and pants were took off me. I was finger printed and melted wax poured over my hands.

Q. Do you know what the purpose of that was for? A. I understand it to be a parafine test. I had a nick here in my hand and I was told that it was just routine.

Q. And then were you . . . where were you taken? A. I was took back to a cell and given a big pair of overalls.

Q. At that time, did you know that Mrs. Holmes was either dead or alive? A. No, sir.

Q. Did you try to find out what the charges were against you or not? (261) A. Yes, sir, I did.

Q. Were you able to find out? A. No, sir, I wasn't. Visitors had come to jail to see me and they was told—

The Court: Now, don't tell that.

Q. Bill, where have you been for the last ten years? A. In Nashville State Penitentiary.

Mr. Haynes: You may cross examine.

Cross Examination by Mr. Wooten:

Q. Mr. Stubbs, when were you released from the Texas State Penitentiary? A. June 4, 1954.

Q. You left Texas at that time and didn't have any food? A. Well, I left that night.

Q. You left that night? A. Yes, sir.

Q. You were turned out of the penitentiary and didn't have any money or anything of that nature? A. When I was released, I was given an off color suit of kaki suits . . . kaki clothes and a pair of prison mate shoes and a check for $50.00.

Q. Fifty dollars. Alright. Is that where you used the money to buy the gun? (262) A. No, sir, I did not buy the gun.

Q. Where did you get the gun? A. I got that gun later that afternoon.

Q. And where did you get the gun at? A. In Houston, Texas.

Q. Where is the Texas State Penitentiary? A. Huntsville, Texas.

Q. How far is that from Houston? I am not familiar with it. A. Well, I am not neither, but I guess it is about 60 or 70 miles.

Q. Did you buy the gun there? A. I did not buy the gun.

Q. Did you steal the gun? A. No, I did not, sir.

Q. How did you obtain possession of it? A. When I was released with another fellow. And we was met just outside the entrance with a fellow that had a clothing store

and we went down there outfitted ourselves in presentable clothes.

Q. Did you buy a suit of clothes there? A. No, I used that check for $50.00 and I gave him those old clothes for a pair of shoes that was presentable to walk in and a pair of pants and a shirt.

(263) Q. And that cost you how much? A. I had about three or four dollars left.

Q. You bought a khaki shirt? A. Yes, sir.

Q. And a— A. No, I didn't buy that Khaki shirt then.

Q. Well, you bought a shirt and a pair of pants? A. Yes, sir.

Q. And a pair of shoes— A. And some under clothes.

Q. And that came to $47.00? A. And some socks and some shoes, yes, sir.

Q. It cost you $47.00? A. Close to it. I know when I got on the bus at Houston, Texas, I had about three dollars left in my pocket.

Q. And where did you start hitchhiking, Mr. Stubbs? A. Outside of Houston, Texas.

Q. Just outside of Houston, Texas? A. Yes, sir.

Q. You had a road map at that time? A. No, sir, I did not.

Q. Well, when did you determine that you were going to have to go through Georgia, Alabama, and Mississippi, and Louisiana— A. I didn't anticipate going through all of that.

(264) Q. Well, where did you formulate that route? A. Well, the tentative plan was to go on to Louisana and I would try to catch the harvesting crews that were working in that area at that time. And I knew some people over there when I was there before in '52. And I hitchiked over into Marigold, Louisiana and the people had moved and so I started back toward Texas for Beaumont, that would have been, I understand, the easiest route to reach New York State.

Q. To go back to— A. To Beaumont, Texas.

Q. To Beaumont, Texas? A. It is a distance of about 40 some miles, I understand.

Q. Beaumont, Texas is West from there? A. I don't know, which direction it is in.

Q. Now, were you in the State Penitentary for? A. Breaking into a cafe in Vanhorn, Texas.

Q. Is that the first—

Mr. Haynes: Your Honor, we except to that.

The Court: Yeah, you can't go into that.

Q. Now, I don't believe that you have told us exactly how you got this gun yet?

Mr. Haynes: We except to the question as being repetitious.

The Court: I don't believe that he ever told how he (265) got the gun, let him answer it.

A. This fellow that I was with, we intended to work a week as a harvester together and the reason that we went to Houston, he said that he knew some friends where we could pick up enough cash to tide up us over until we could find a job.

Q. And that was the purpose of getting a gun until you had worked a week? A. I did not know at that time that he was going to get the gun. I was in the hotel room when he brought the gun up. He said that he got it from a buddy of his.

Q. And gave it to you? A. No, sir, not then.

Q. Well, when did he give it to you? A. We caught a taxi cab out of Houston, Texas at around midnight using the last of our money and we started walking and it was early morning at daylight when we was stopped by the highway patrol and asked where we was going and where we had come from.

Q. Who was carrying the gun at that time? A. He was.

Q. And after they left, he started to throw the gun away. Because he was in there for armed robbery anyway and didn't want to get caught with it.

Q. And when he throwed it away, then you picked it up?

(266) A. Yes, I did. I knew that Louisiana that some of the areas down through there—

Q. I didn't ask you what you— A. Well.

Mr. Haynes: Now, we except to that remark, if Your Honor please.

The Court: Go ahead and you needn't remark about anything Mr. Attorney General. Sustain the objection.

Q. Now, you say that you spend the night in Murphy, North Carolina? A. No, I did not state that.

Q. Well, you have had a copy of this record before, haven't you? A. I have looked at it.

Q. You have read it, have you not? A. Yes, sir.

Q. Well, where did you spend the night of June 10th? A. At Cherokee Lake Motel on the lawn.

Q. You have read it, have you not? A. Yes, sir.

Q. I thought that you told here this morning that you stayed in Johnson City—

Mr. Haynes: We except to the Attorney General—

The Court: Wait a minute. He asked him a question. He can say whether he did or didn't.

Mr. Haynes: The form of the question, I thought that you did such and such. Now, he can say he did or did (267) not.

Q. Well, I will ask if you didn't state a little while ago that if you didn't state in response to Mr. Hayne's ques-

tion, that you stayed over at Johnson City bus station behind the garage there— A. That was the morning of June 10th.

Q. That was the morning of June 10th? A. The morning of June 10th.

Q. Alright, now, when did you leave Murphy, North Carolina? A. I am not sure. I think it was around ten o'clock in the evening of June 8th.

Q. Of the 8th? A. I am not sure, because the routes were long. Some were long and some were short and I could sleep when I could. I am not sure of the dates.

Q. I have before me a road map and it shows Murphy, North Carolina and it—

Mr. Haynes: We except to that—

The Court: I will rule on it when he asks the question.

Mr. Haynes: Well.

The Court: Don't answer it until I rule on it.

Q. It shows Murphy, North Carolina to be about seven miles from the Georgia Line where it joins Tennessee. Am I correct in assuming that? A. I don't know, sir

(268) Q. You were there? A. Yes, I was there.

Mr. Haynes: I am going to except to this line of argument.

The Court: Now, let him cross examine. Go ahead with it.

Q. You say that you left there about 10 o'clock on June 8th? A. I presume that it was the 8th, sir. As best that I can recall.

Q. Do you remember at the previous trial, did you tell Corporal Pendergrass that you left Murphy, North Carolina early on the morning of June 10th—

Mr. Haynes: Now, we except to this. What has Murphy North Carolina got to do with this?

The Court: Well, let him answer the question. Let's get on with it.

Mr. Haynes. We except to the form of the question, did you tell Corporal Pendergrass at the former trial.

The Court: I don't think that he told him at the trial, it was afterwards.

A. I don't recall that.

Q. Now, you do recall being in Johnson City? A. Yes, for a short time.

Q. On the evening of the 9th of June? A. Early in the evening, I caught a ride out of Johnson (269) City.

Q. With someone going to Bristol? A. No, going by Bristol. He said that he was passing through it.

Q. Now, where did you sleep the next night after you left Johnson City? A. Well, the rest of that night until the early morning of June 11th, I was . . . I put myself on the lawn beside the road of the Cherokee Lake Motel. Big Chief Motel.

Q. Now, the Big Chief Motel is down in Granger County, Tennesse, is it not? A. I don't know myself.

Q. About six or seven miles north west of The Rogersville Motel . . . I mean about six or seven miles north west of Rogersville, Tennessee? A. I guess so, I don't know.

Q. Now, how did you get from there to the truck stop? The one that you were talking about? A. On the morning of June 11th, a fellow give me a ride.

Q. All the way up to the truck stop? A. Yes, sir.

Q. And about what time did you encounter the Holmes on Cherokee Lake? A. I guess that it was about noon. Because they was eating and I assume that it was noon.

(270) Q. Had you slept the night before down on Cherokee Lake? A. No, sir.

Q. Do you remember telling someone that you shot a turtle down there underneath the bridge with one shot out of the pistol? A. I don't recall that.

Q. You don't deny that you did it? A. I don't recall it.

Q. Did you do it?

Mr. Haynes: Your Honor I except to it.

The Court: Yeah, he has been on it long enough. Let's go to something else.

Mr. Wooten: I asked him if he did it.

The Court: He said that he didn't recall, if he did. The way that I understood him.

Mr. Wooten: He said that he denied saying it. I don't believe that he—

The Court: Well, go ahead. Ask the next question and let's get along.

Q. Did you shoot one? A. I shot at one.

Q. You shot at one? Underneath the bushes? A. Yes, sir.

Q. That left you five shells then in your gun. A. Yes, sir.

(271) Now, when you came up on the Holmes eating there, you did pull the gun on them and you abducted them and you did pull the gun on them? A. Not right then.

Q. Well, you did point the gun at them and put them in the car, did you not?! A. When I told them to get in the car.

Q. Pointed the gun at them and forced them into the car? A. Yes, sir.

Q. And you started to drive the car? A. Yes, sir.

Q. You told them that you were a stock car driver? A. Yes, I did tell them that.

Q. And you had your gun in your belt? A. No, sir—

Q. Did you stick it back in your belt or did you have it in your hand? A. I had the gun in my hand until I laid it down on the seat.

Q. That is the same gun that you had in your belt when you caught the ride with the officers in Murphy, North Carolina? A. Yes, sir.

Q. That is the same gun that you had when the officers captured you? A. Yes, sir.

(272) Q. Do you remember laying the suitcase up in the front seat, Mr. Stubbs? To make room in the back? A. No, sir. It was moved around in the back seat. I don't recall, but there was no front—no suitcase in the front seat, sir.

Q. Alright, how long were you in the car before you laid the gun down? A. Until we got to the outskirts of Rogersville when it was suggested.

Q. Who suggested it? A. Mrs. Holmes did. She suggested that I put it outside. Out of sight.

Q. Put it out of sight? A. Yes, sir.

Q. Now, from where Mrs. Holmes was sitting in the back directly behind you, could she see the gun, were you holding it on her in her face at that time? A. No, I had it right here (indicating).

Q. Up in your left hand, I believe? A. Yes, sir.

Q. You held the gun up like this on her? (indicating). A. Yes, sir.

Q. From the bridge in Rogersville—from the Bridge on Cherokee Lake, to Rogersville, you held the gun up in her face like this? (indicating) (273) A. Not all of the time, sir. Sometimes, I had it resting on my arm on the wheel.

Q. At that time, did Mrs. Holmes suggest to you that you lay the gun down in the seat? A. She suggested that I put it out of sight. She assured me that they would not cause me any trouble and if somebody was to see it, there might be trouble.

Q. What did you do with it then? A. I laid it down on the seat.

Q. At that time, where was Mr. Holmes? A. Sitting in the back seat.

Q. Did he have his hands on the back of the seat and did Mrs. Holmes have her hands on the back of the seat? A. I couldn't see Mrs. Holmes.

Q. You couldn't see Mrs. Holmes. Did you adjust the mirror on the back of the car? A. I do not remember, sir.

Q. About how far from your hand, did you lay the gun? A. About six inches. Six or seven inches. Not very far.

Q. Mr. Stubbs, you are left handed? A. Yes, I am.

Q. You were driving the car with your left hand? A. Yes, I was.

Q. And you took the gun and laid it over there in the seat and you— (274) A. No, I didn't, I laid it right down here (indicating). I changed my right hand and laid it down in the seat beside me.

Q. You changed it into your right hand? A. Yes, sir.

Q. And the gun remained there in the seat as far as you know? A. As far as I know, sir.

Q. Could you see Mr. Holmes as you were driving along? A. I could—when I turned my head, I could see him.

Q. And he had laid his hands on the back of that seat as you had instructed him? A. He had his hands up there once or twice and moved them and I told him to keep them still and he was back and forth.

Q. Is that why you told him to keep them still? A. Why I told him?

Q. Yes. A. I don't recall. He had moved around two or three times.

Q. Well, was that before you laid the gun down or afterwards? A. That was after.

Q. After? A. Yes, sir.

Q. He was told to keep his hands still and he did? (275) A. He did for a little while. He sure was figgity.

Q. You had the gun in your hands though? A. No, sir.

Q. You say that as you were coming up all the way through Kingsport, and all the way up through Blountville, that friendly relations were being maintained by Mr.

Holmes? A. They had talked to me and told me where they was going. Most of the time he was talking to his wife.

Q. You knew at that time where they were going? A. Yes, Mrs. Holmes had told me where they were going.

Q. Now, did you study your road map very carefully, Mr. Stubbs? A. No, sir, I haven't.

Q. As you passed up in front of the Draper Corporation, what did you say happened? A. I glanced out the window at that crowd of people in front of the Draper Corporation.

Q. And the next thing that you knew was what? A. Some one hit me on the head.

Q. Where was the gun then, Mr. Stubbs? A. The last that I see it, it was on the seat beside of me.

Q. Did you shoot Mrs. Holmes? A. No, sir, I did not.

Q. Do you remember before being asked this question, Mr. (276) Stubbs—

Mr. Haynes: Your Honor please, he has no basis for reading out of some transcript and asking if he remembers.

The Court: Yeah, that is right. Go ahead to something else.

Q. Was Mrs. Holmes wearing glasses? A. Yes, I think I seen them on.

Q. I mean Mr. Holmes? A. Yes.

Q. Was he wearing glasses at the time that the shooting took place? A. I don't know.

Q. You were in the car, were you not? A. Yes, I was.

Q. How many shots were fired in that car? A. All that I heard was just one bang. Just loud noises.

Q. Was it one, two, three, or four, or were you able to separate them? A. All that I heard was just one bang and everything was just a loud noise.

Q. Do you know whether the blood on your shirt came

from Mr. Holmes face or not? A. That was never brought up at the last trial.

Q. I will ask you if you were not asked this question on page 325 of the transcript—

> (277) Mr. Haynes: Now, Your Honor, the attorney General is doing exactly what Your Honor instructed him not to. And we object.
>
> The Court: Don't read the questions from the record. Ask the question, if you want to. You can refresh his mind from the record, but don't read from the record.

Q. Do you know Garney Hicks? A. Not that I know personally.

Q. Did you ever see a Garney Hicks that you know of? A. I saw him in the Court Room.

Q. How about Ed Jenkins? A. I know Ed Jenkins.

Q. Charley Bailey? A. Just by seeing him.

Q. Pete Mabe? A. Just by seeing him.

Q. Now, Mr. Stubbs, when the car came to a—was the car still rolling when you got out of it? A. Yes, sir.

Q. And how did you get out of the car? A. I went out head first.

Q. Head first? A. Yes, sir.

Q. Had you gotten those places on your head at that time? A. No, because I landed on my left shoulder.

(278) Q. And what did you do when you got out of the car? A. I got up and run.

Q. Why did you run? A. Just . . . he had the pistol.

Q. How far did you run? A. I don't know, sir, not too far.

Q. That was about what time of the day? A. I don't know, sir. Some people at the last trial said that it was about one thirty or two o'clock.

Q. And you know . . . . you don't know how far you ran? A. It wasn't too far.

William Charles Stubbs—Cross.

Q. Do you know where you ran to? A. To a plowed field.

Q. Did you stop in the plowed field and stand up? A. No, I was running until I passed out. Everything just went black.

Q. Everything went black? A. Yes, sir.

Q. And what time was it when you came to? A. I don't know, sir.

Q. Was it daylight or dark? A. You could see a little bit, but it was just like it is at dusk.

Q. Now, do you know how far you traveled while you were passed out? (279) A. I don't reckon I traveled any place.

Q. But, you were still close to the scene of where this had taken place at? A. Yes, sir.

Q. Now, when Mr. Bernie Webb picked you up, you were where? A. Walking up that little dirt road toward the highway.

Q. And that little dirt road runs back into the highway about two miles this side of Bristol? A. I don't know, sir.

Q. Well, if it has been testified to—

Mr. Haynes: Well, it is . . . it has not been testified to. We object.

The Court: Sustained.

Q. Do you remember having a conversation with Mrs. Holmes in the car as you were passing through Blountville about the next town being Bristol? A. I remember a sign that said Bristol and there was some remark made about it.

Q. Did Mrs. Holmes say that there— A. I do not know who made the remark. I don't recall, I just recall that the remark was made.

Q. Before when you were asked why you left the car, do you remember replying that you were afraid of the police and that you didn't want to get caught? (280) A. No, I do not, sir.

Q. Had you been in trouble with them before?

Mr. Haynes: Now, Your Honor, we excepted to that a minute ago and it was sustained.

The Court: I believe that we have talked about his previous record. Sustained.

Q. Were you asked before why you run and jumped out of the car? A. I don't know.

Q. Were you scared? A. I was.

Q. Mr. Stubbs, let me ask you this, have you ever been convicted of kidnapping, murder, and felonious assault that all that took place at the same time?

Mr. Haynes: We except to that question and move for a mistrial.

The Court: Sustain the objection. Go ahead, gentlemen and let's go.

Mr. Haynes: We except to his Honor's ruling.

The Court: You mean that you except to it being sustained?

Mr. Haynes: Oh no, overruling our motion for a mistrial, if Your Honor please.

The Court: Oh, gentlemen. Go ahead. He hasn't answered it one way or the other, whether he did or didn't. That is no cause for a mistrial. Go ahead gentlemen.

(281) Mr. Haynes: He just asked that question to prejudice the jury.

Mr. Wooten: Alright, come down.

AND FURTHER THIS WITNESS SAITH NOT:

WILLIAM CHARLES STUBBS
BOB CLARK, Court Reporter.

Alex Holm, Rebuttal.

(284) A. Alex Holm, the prosecutor, was recalled—

The Court: Now, wait a minute. Now, go ahead. Excuse me.

A. Alex Holm, the prosecutor, was recalled to the stand in rebuttal, and testified further as follows:

Redirect Examination by Mr. Smith:

Q. You are Mr. Alex Holm, the prosecutor, and you testified in (285) this case on yesterday? A. Yes.

Q. Mr. Holm from the time that you left the roadside park in Hawkins County until you got to the point where your wife met death and you were shot, was this .32 pistol ever lying in the front seat?

The Court: Now, wait a minute. Now, was that objected to?

Mr. Haynes. Yes, sir.

The Court: Was that in the evidence in chief?

Mr. Wooten: I don't remember whether it was or not. I know that Mr. Holm said that it was.

Mr. Haynes: It has already been testified to.

The Court: From my memory, he said that he had it in his hands.

Mr. Haynes: Well, it was sustained, Your Honor.

The Court: Was it sustained?

Court Reporter: Yes, sir.

The Court: Well, go ahead to the next one then. Mr. Holm, at the time that you hit the defendant in the head three or four times with this pistol, had Mrs. Holm been shot one time and you shot twice?

Mr. Taylor: Exception, may it please the Court. That has been gone over on direct testimony of the State's case.

The Court: Isn't that true, gentlemen? Didn't Mr. Holm (286) testify that his wife was shot and he was shot and then he got the pistol and grabbed it out of the defendant's hand.

Mr. Smith: Yes, Your Honor.

Q. Mr. Holm from the time that you left the roadside park until this occurrence near Blountville, was the relationship friendly between you and your wife and the defendant Stubbs or were you and Mrs. Holm afraid of him?

Mr. Taylor: Exception, may it please the Court. That has been gone over and it is evidence in chief.

The Court: Did he answer that?

Court Reporter: Yes, he did, but it was overruled.

The Court: Overruled. I am going to let him answer it, because as I recall now, gentlemen, the proof was that there was friendly relations. I am going to let him answer it.

Mr. Haynes: Note our exceptions.

A. No, sir, there was no friendly relations.

Q. No friendly relationship? No, sir.

Mr. Taylor: We except to the Attorney General repeating the answer.

The Court: I sustain that.

Q. Did he ever ask you to come up and ride in the front seat, Mr. Holm? A. No, sir, I couldn't.

(287) The Court: Now, wait a minute, that is not in rebuttal. I sustain the objection to that.

Q. You say he didn't ask you to come up and ride with him? A. No, sir.

Q. Did you ever request him—

Mr. Taylor: We want to stop here, may it please the Court. I was to except—

The Court: Yeah, skip that objection there.

Q. Mr. Holm, did at any time you ever request this defendant Stubbs to drive your car? A. No, sir.

Mr. Taylor: Just a minute, that is evidence in chief. (Then recross examination by Mr. Taylor.)

The Court: Then I sustain the objection.

Q. Mr. Holm, do you know Mr. Cook? A. Yes.

Q. Who is he? A. He was the undertaker that came out and got me and my wife.

Q. You have told yourself two stories about this, haven't you, Mr. Holm—

The Court: Now, wait a minute. I don't know what the next question is?

Mr. Wooten: We don't want that—

The Court: Is that all you have?

Mrs. Wooten: Yes, Your Honor.

The Court: Come down.

And further this witness Saith Not.